Feb. 14 Submitted by Mr. Allison

Feb. 17 Record - Davis

Clerk Supreme Court

SUPREME COURT OF THE UNITED STATES.

No. ~~103.~~ 1114.

J. EDGAR THOMPSON, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF LEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

GOVERNMENT PRINTING OFFICE, WASHINGTON.

SUPREME COURT OF THE UNITED STATES.

No. 193.

J. EDGAR THOMPSON, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF LEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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UNITED STATES OF AMERICA,
1 *District of Iowa:*

Pleas before the circuit court of the United States, at a term begun and holden at Des Moines, in the district of Iowa, on the second Tuesday, it being the 12th day of May, A. D. 1863, before the Hon. Samuel F. Miller, circuit judge, and Hon. James M. Low, district judge,

Be it remembered that on the third day of March, 1862, a petition was filed in the office of the clerk of the district court in and for the district of Iowa, in the southern division thereof, in the words and figures following, to wit:

Petition or declaration.

District court of the United States, for the district of Iowa, southern division.

J. EDGAR THOMSON }
v. }
THE COUNTY OF LEE, }

And now comes J. Edgar Thomson, plaintiff, a citizen of the State of Pennsylvania, residing in Philadelphia, and claims of the county of Lee, Iowa, a body corporate, existing under and by virtue of the laws of the State of Iowa, being a county and municipal corporation, in said State of Iowa, and a citizen of the State of Iowa, de-
2 fendant, the sum of ten thousand dollars, and for cause of such claim states:

That, in pursuance of a vote of the people of said county, had and taken at a public election on the 10th day of September, 1856, authorizing the county judge of said county to subscribe the sum of one hundred and fifty thousand dollars to the capital stock of each of three certain railroads in the State of Iowa, viz: "The Keokuk, Fort Des Moines and Minnesota Railroad Company;" "The Keokuk, Mount Pleasant and Muscatine Railroad Company," and "The Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company," for the purpose of aiding in the construction of said railroads, and, in part payment of same, to issue the bonds of said county, the county judge of said county, S. Boyles, thereafter, on or thereabout the 1st of January, A. D. 1857, did execute, under the seal of said county, and sign the same as county judge of said county, and issue one hundred and fifty of said bonds of the county of Lee, Iowa, aforesaid, and all bearing date January 1, 1857, for the sum of one thousand dollars each, and numbered from one to one hundred and fifty, inclusive, all payable to the "Keokuk, Mount Pleasant and Muscatine Railroad Company," or bearer, at the Continental Bank, in the city of New York, twenty years after date, with interest thereon, at the rate of eight per cent. per annum, payable at same place, semi-annually,
3 on the first days of January and July in each year thereafter; for which interest said defendant, by her county judge aforesaid, by the authority aforesaid, at the date aforesaid, executed her

forty promissory notes, or coupons, attached to each of said bonds, each coupon for the sum of forty dollars, signed by S. Boyles, county judge of said county, and having the same number as the bond to which same was attached, all payable to bearer, at the Continental Bank, in the city of New York, as follows: One (on each bond) payable on 1st July, 1857, one on the 1st January, 1857, and so on, one every successive six months thereafter, and up to the 1st January, 1877.

And plaintiff states further, that on the 1st January, 1857, by virtue of same authority, S. Boyles, county judge of said county, did execute, under seal of said county, sign the same as county judge of said county, and issue one hundred and fifty other bonds of the "county of Lee, Iowa," all having date January 1st, 1857, for the sum of one thousand dollars each, and numbered from one to one hundred and fifty, inclusive, all payable to the "Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company," or bearer, at the Continental Bank, in the city of New York, twenty years after date, with
4 eight per cent. interest thereon, payable at the same place, semi-annually, on the 1st days of January and July of each year thereafter; for which interest, said defendant, by her county judge aforesaid, by the authority aforesaid, at the date aforesaid, executed her certain forty other promissory notes, or coupons, attached to each of said bonds last aforesaid, each coupon being for forty dollars, signed by S. Boyles, county judge of said county, having the same numbers as the bonds to which they were attached, all payable to the bearer, at the several times as follows: One (on each bond) payable on 1st July, 1857, one on 1st January, 1858, and so on, one every successive six months thereafter, up to the 1st January, 1877. Whereby plaintiff states defendant promised and has become liable to pay to the bearer the sum of forty dollars on each coupon, with interest on each from the time same became due.

Plaintiff states he has now, for a valuable consideration, become the owner and bearer of "sixty-three of said coupons, taken and detached from the said bonds issued to the "Keokuk, Mount Pleasant and Muscatine Railroad Company," the said coupons being designated by their several numbers and dates of maturity, as follows, to wit:

Nos. 1, 143 and 144, making $120, due 1st July A. D. 1859;
5 Nos. 66, 67 and 68, making $120, due 1st July A. D. 1860;
Nos. 66, 67, 68, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 114, 115, 116, 117 and 118 and 119, making $840, due 1st January, 1861; Nos. 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 114, 115, 116, 117, 118 and 119, making $720, due 1st July, A. D. 1861; Nos. 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 114, 115, 116, 117, 118 and 119, making $720, due 1st January A. D. 1862, and amounting in all to the sum of $2,520.

Plaintiff states, further, he has now, for a valuable consideration, become the owner and bearer of "104" said coupons, taken and detached from the said bonds issued to the said "Fort Des Moines, West Point, Keosauqua and Bloomfield Railroad Company," the same being designated by their several numbers and dates of maturity, as

follows, to wit: Nos. 80, 81, 82, 83, 84, 140, 141, 142, 143, 144 and 145. making $440, due 1st July, 1859; Nos. 61, 62, 63, 64, 65 and 66, making $240, due 1st January, 1860; Nos. 61, 62, 63, 64, 65, 66, 77, 78 and 101, making $360, due 1st July, 1860; Nos. 61, 62, 63, 64, 65, 66, 77, 78, 80, 81, 82, 83, 84, 85, 101, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149 and 150, making $1,120, due 1st January, 1861; Nos. 61, 62, 63. 64, 65, 66, 80, 81, 82, 83, 84, 85, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149 and 150, making $1,000, due 1st July, A. D. 1861; Nos. 61, 62, 63, 64, 65, 66, 80, 81, 82, 83, 84, 85, 138, 139, 140, 141, 142, 143, 144, 145, 146,
6 147, 148, 149 and 150, making $1,000, due 1st January, A. D. 1862, and amounting in all to the sum of $4,160.

Plaintiff attached hereto, and makes same a part of this petition, a copy of coupon No. 80, due 1st July, 1859, and says all the said coupons above referred to are like this one in all respects except their respective numbers and several times when due; and for this reason, as well as because of the great amount of useless labor it would require, he does not set out and exhibit a full copy of each coupon, and plaintiff attaches a copy of one of said bonds issued to each of said railroads, and makes same part this petition.

Plaintiff states that all of said coupons, being 167, have now become his property, are in his possession, are past due, and wholly unpaid. That defendant has become liable to pay same, and the interest on each since same became due, which defendant has failed and refused to pay, though often requested, to the great damage of plaintiff, to wit, in the sum of $10,000.

Plaintiff states he bought said coupons, and each of them, for a valuable consideration before maturity, upon the faith of the judicial decisions of the supreme court of the State of Iowa, before
7 rendered, concerning the same; that they were valid and binding upon the said defendant; and therefore plaintiff prays judgment against said defendant in the sum of ($10,000) ten thousand dollars, interest and costs of suit to be taxed.

PLATT SMITH,
H. SCOTT HOWELL,
Attorneys for Plaintiff.

Copy of bond.

UNITED STATES OF AMERICA,
State of Iowa, County of Lee.

Eight per cent. railroad subscription bond. No. 32.

Issued under authority of a vote of the people of Lee county, Iowa, at an election held September 10, 1856, authorizing the county judge thereof to make to the "Ft. Madison, West Point, Keosauqua and Bloomfield Railroad Company" a subscription of $150,000 to the capital stock of said company, and to issue bonds therefor.

Twenty years after date the county of Lee, in the State of Iowa, promises to pay to the Ft. Madison, West Point, Keosauqua and Bloomfield Railroad Company, or bearer, at the Continental Bank, in

the city of New York, one thousand dollars, for value received, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, at the same place, on the first day of January and the first day of July in each year. on presentation and delivery of the interest coupons hereto attached.

8 And the said county of Lee doth agree and stipulate, to and with the said railroad company, and whoever may become the holder of this obligation, that the stock of the Ft. Madison, West Point, Keosauqua and Bloomfield Railroad Company, subscribed for and issued to the said county, in exchange for and in satisfaction of this obligation, (being one of a series of bonds, amounting in the whole to the sum of $150,000 ;) and the dividends arising therefrom, and the proceeds of any sale thereof, shall be sacredly set apart and preserved for the payment of the interest and redemption of the principal of this obligation and other obligations of the series aforesaid, of which this constitutes a part, and that said stock and proceeds thereof shall not be used for any other purpose while any of said obligations remain unpaid.

In witness whereof, the county judge of said county of Lee hath hereunto subscribed his name, and caused the corporate seal [L. S.] of said county to be affixed, this first day of January A. D. 1857.

(Signed) S. BOYLES,
County Judge.

Assignment.

For value received, the Ft. Madison, West Point, Keosauqua and Bloomfield Railroad Company, doth hereby assign and transfer the above bond to ————, or bearer, and guarantee the payment of the principal and interest therein stipulated; and doth further

9 agree that the holder of said bond, or his, her, or their agent or attorney, shall, on demand, have the right, at any time within ten years from the date thereof, to exchange the principal of said obligation for the stock in the said railroad company at par, upon the surrender of said bond and unpaid coupons of said company.

KEOKUK, January 1st, A. D. 1857.

By order of the board of directors :

(Signed) THOMAS S. ESPY,
President.

ROBERT A. RUSSELL,
Secretary.

[R. R. SEAL.]

Acknowledgment.

STATE OF IOWA, *Lee County :*

On this twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty-seven, before me Erie J. Leech, clerk of the district court of said county, personally came Samuel Boyles, judge of the county of Lee, in the State of Iowa, personally

known to me to be the identical person whose name is affixed to the foregoing bond or obligation, and known to me to be the county judge of said county of Lee, having full power and authority to bind said county by contract, and who, in the behalf of the said county of Lee, acknowledged the said bond or obligation to be his voluntary act and deed, and the voluntary act and deed of said county of Lee.

In testimony whereof, I have hereunto signed my name, and caused the seal of the clerk of the district court of said county to be hereunto affixed on the day and year first above written. [L. S.]

(Signed) ERIE J. LEECH,
Clerk of the Dist. Court of Lee County.

Copy of bond.

UNITED STATES OF AMERICA,
State of Iowa, County of Lee:

Eight per cent. railroad subscription bond. No. ——.

Issued under authority of a vote of the people of Lee county, Iowa, at an election held September 10th, 1856, authorizing the county judge therefor [thereof] to make to the Keokuk, Mt. Pleasant and Muscatine Railroad Company a subscription of $150,000 to the capital stock of said company, and to issue bonds therefor.

Twenty years after date the county of Lee, in the State of Iowa, promises to pay to the Keokuk, Mt. Pleasant and Muscatine Railroad Company, or bearer, at the Continental Bank, in the city of New York, one thousand dollars, for value received, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, at the same place, on the first day of January and the first day of July in each year, on presentation and delivery of the interest coupons hereto attached.

And the said county of Lee doth agree and stipulate, to and with the said railroad company and whosoever may become the holder of this obligation, that the stock of the Keokuk, Mt. Pleasant and Muscatine Railroad Company, subscribed for and issued to said county, in exchange for and in satisfaction of this obligation, (being one of a series of bonds, amounting in the whole to the sum of $150,000;) and the dividends arising therefrom, and the proceeds of any sale thereof, shall be sacredly set apart and preserved for the payment of the interest and redemption of the principal of this obligation and other obligations of the series aforesaid, of which this constitutes a part, and that said stock and proceeds thereof shall not be used for any other purpose while any of said obligations remain unpaid.

In witness whereof, the county judge of said county of Lee, hath hereunto subscribed his name, and caused the corporate seal of said county to be affixed, this first day of January, A. D. 1857. [L. S.]

(Signed) S. BOYLES,
County Judge.

the city of New York, one thousand dollars, for value received, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, at the same place, on the first day of January and the first day of July in each year. on presentation and delivery of the interest coupons hereto attached.

8 And the said county of Lee doth agree and stipulate, to and with the said railroad company, and whoever may become the holder of this obligation, that the stock of the Ft. Madison, West Point, Keosauqua and Bloomfield Railroad Company, subscribed for and issued to the said county, in exchange for and in satisfaction of this obligation, (being one of a series of bonds, amounting in the whole to the sum of $150,000 ;) and the dividends arising therefrom, and the proceeds of any sale thereof, shall be sacredly set apart and preserved for the payment of the interest and redemption of the principal of this obligation and other obligations of the series aforesaid, of which this constitutes a part, and that said stock and proceeds thereof shall not be used for any other purpose while any of said obligations remain unpaid.

In witness whereof, the county judge of said county of Lee hath hereunto subscribed his name, and caused the corporate seal [L. S.] of said county to be affixed, this first day of January A. D. 1857.

(Signed) S. BOYLES,
County Judge.

Assignment.

For value received, the Ft. Madison, West Point, Keosauqua and Bloomfield Railroad Company, doth hereby assign and transfer the above bond to ————, or bearer, and guarantee the payment of the principal and interest therein stipulated; and doth further

9 agree that the holder of said bond, or his, her, or their agent or attorney, shall, on demand, have the right, at any time within ten years from the date thereof, to exchange the principal of said obligation for the stock in the said railroad company at par, upon the surrender of said bond and unpaid coupons of said company.

KEOKUK, January 1st, A. D. 1857.

By order of the board of directors :

(Signed) THOMAS S. ESPY,
President.

ROBERT A. RUSSELL,
Secretary.

[R. R. SEAL.]

Acknowledgment.

STATE OF IOWA, *Lee County :*

On this twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty-seven, before me Erie J. Leech, clerk of the district court of said county, personally came Samuel Boyles, judge of the county of Lee, in the State of Iowa, personally

known to me to be the identical person whose name is affixed to the foregoing bond or obligation, and known to me to be the county judge of said county of Lee, having full power and authority to bind said county by contract, and who, in the behalf of the said county of Lee, acknowledged the said bond or obligation to be his voluntary act and deed, and the voluntary act and deed of said county of Lee.

In testimony whereof, I have hereunto signed my name, and caused the seal of the clerk of the district court of said county to be hereunto affixed on the day and year first above written. [L. S.]

(Signed) ERIE J. LEECH,
Clerk of the Dist. Court of Lee County.

Copy of bond.

UNITED STATES OF AMERICA,
State of Iowa, County of Lee:

Eight per cent. railroad subscription bond. No. ——.

Issued under authority of a vote of the people of Lee county, Iowa, at an election held September 10th, 1856, authorizing the county judge therefor [thereof] to make to the Keokuk, Mt. Pleasant and Muscatine Railroad Company a subscription of $150,000 to the capital stock of said company, and to issue bonds therefor.

Twenty years after date the county of Lee, in the State of Iowa, promises to pay to the Keokuk, Mt. Pleasant and Muscatine Railroad Company, or bearer, at the Continental Bank, in the city of New York, one thousand dollars, for value received, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, at the same place, on the first day of January and the first day of July in each year, on presentation and delivery of the interest coupons hereto attached.

And the said county of Lee doth agree and stipulate, to and with the said railroad company and whosoever may become the holder of this obligation, that the stock of the Keokuk, Mt. Pleasant and Muscatine Railroad Company, subscribed for and issued to said county, in exchange for and in satisfaction of this obligation, (being one of a series of bonds, amounting in the whole to the sum of $150,000;) and the dividends arising therefrom, and the proceeds of any sale thereof, shall be sacredly set apart and preserved for the payment of the interest and redemption of the principal of this obligation and other obligations of the series aforesaid, of which this constitutes a part, and that said stock and proceeds thereof shall not be used for any other purpose while any of said obligations remain unpaid.

In witness whereof, the county judge of said county of Lee, hath hereunto subscribed his name, and caused the corporate seal of said county to be affixed, this first day of January, A. D. 1857. [L. S.]

(Signed) S. BOYLES,
County Judge.

Coupon.

Copy of coupon No. 80, due July 1st, 1859. $40.

FT. MADISON, IOWA, *January 1st*, 1857.

The county of Lee, Iowa, promises to pay the bearer, at the Continental Bank, in the city of New York, on the 1st day of July, 1859, forty dollars, interest due on bond No. 80.

(Signed) S. BOYLES,
County Judge.

12 *Præcipe.*

J. EDGAR THOMPSON, a citizen of the State of Pennsylvania, pl't'ff,
vs.
"THE COUNTY OF LEE, IOWA," a municipal corporation existing under and a citizen of the State of Iowa, def't.

Issue a summons in above-named case, returnable according to law; indorse suit brought on 167 coupons, made by defendant.

Amount claimed due $10,000, and interest, and costs.

PLATT SMITH and
H. SCOTT HOWELL, *Att'ys for Pl'tff.*

To CLERK U. S. D. C., March 3d, 1862.

Summons.

And on the same day, to wit, the 3d day of March, A. D. 1862, a writ of summons was issued in the words and figures following, namely:

UNITED STATES OF AMERICA,
District of Iowa, ss.

To the marshal of said district, greeting:

In the name of the President of the United States, we command you to summon "The County of Lee, Iowa," a municipal corporation existing under and a citizen of the State and district of Iowa, if it be found in your bailiwick, to be and appear before the district
13 court of the United States for the district of Iowa, aforesaid, at Keokuk, in said district, on the third Tuesday in the month of March, A. D. 1862, to answer unto J. Edgar Thompson, a citizen of the State of Pennsylvania.

Suit brought on 167 coupons made by defendant. Amount claimed due, $10,000, and interest, and costs, and have then and there this writ.

Witness the Hon. J. W. Low, judge of said district court, [L. S.] this 3d day of March, 1862, and in the eighty-sixth year of the independence of the United States of America.

Attest: J. C. BURNS, *Clerk.*
By EDW'D MUMM, *Deputy.*

Return.

Upon which writ was indorsed the following return:

This writ came into my hands March 4th, 1862. I served the within writ on the county of Lee, Iowa, by reading the same to Robert A. Russell, county judge of the county of Lee, Iowa, and by leaving with him a true copy of this writ, on the 5th day of March, 1862, in the town of Ft. Madison. No copy of petition demanded.

I served the within writ also by reading the same to H. M. Salmon, president of the board of supervisors of the county of Lee, Iowa, and by leaving with him a true copy of this writ, on the 5th day of March, 1862, in the town of Ft. Madison, Iowa. No copy of petition demanded.

14 H. M. HOXIE, *U. S. Marshal.*
By H. FULTON, *Deputy.*

Marshal's fees.

Service	$4 00
Mileage	1 50
2 copies	50
	6 00

And afterwards, to wit, on the 27th June, 1862, was filed an answer in the words following, to wit:

Answer.

In the district court of the United States, southern division of Iowa.
March term, 1862.

J. EDGAR THOMPSON
v.
THE COUNTY OF LEE,

And now comes the defendant, the county of Lee, and, for answer to said petition of plaintiff, says:

1. That said defendant, the county of Lee, is now, and was at the time said bonds and coupons were issued, to wit, January 1st, 1857, a political and municipal subdivision of the State of Iowa, having by law a legal corporate organization solely for municipal and civil purposes, and having no power or authority to act or do any
15 business for pecuniary profit, but is and was wholly public, and governed by the general laws of the State of Iowa, and having no rights, powers or duties only as authorized by the constitution and laws of the State.

2. And defendant, further answering, says that the Keokuk, Mount Pleasant and Muscatine Railroad Company was, prior to and at the time of the issuing of the said bonds and coupons set forth in plaintiff's petition, and at the time said company received the same, a private corporation, organized under the laws of the State of Iowa, for the object and purpose of constructing and building a railway from the city of Keokuk, in Lee county, across said county, and by way of Mount Pleasant, in Henry county, across said Henry county and a part of Louisa county and a part of Muscatine county, to the city of Muscatine, in Muscatine county; that said company was and is an association of individuals for pecuniary profit, and all property owned by said corporation was and is private property, and all profit arising from the same was subject to be distributed to the private shareholders and those interested in the corporation.

16 3. And the defendant, further answering, says that it is true that Samuel Boyles was, on the 1st day of January, 1857, county judge of said county of Lee, and that he issued said bonds and coupons set forth in plaintiff's petition, and delivered the same to some officer of said company; but the defendant avers and says that said county judge had no authority in law to issue and sign and seal the same so as to bind the county, or to create any obligation against this defendant, and that said bonds and coupons were and are fraudulent and void, and had no binding force or effect, and that the use of the seal of said officer and the attaching the same to said bonds was illegal, without authority, and gave no validity to said obligations, and was fraudulent and void; of all which statements and averments aforesaid, said Ridgway had notice in his lifetime when he received said coupons. And defendant denies that said bonds were issued in pursuance of a vote of the people of the county of Lee, taken on the tenth day of September, A. D. 1856, authorizing the county judge to subscribe the sum of one hundred and fifty thousand dollars to the capital stock of said Keokuk, Mt. Pleasant and Muscatine Rail-

17 road Company, for the purpose of aiding in the construction of said road; and this defendant is ready to verify; wherefore he prays judgment, &c.

HALL, HARRINGTON & HALL,
Attorneys for Defendants.

Demurrer to answer.

And afterwards, on the 29th October, 1862, the following demurrer was filed :

District of Iowa, circuit court, November term, 1862.

J. EDGAR THOMPSON
v.
LEE COUNTY.

Now comes the said J. Edgar Thompson, by H. Scott Howell and Platt Smith, his attorneys, and says that the first, second and third

divisions of defendant's answer are each and all of them insufficient in law. The plaintiff shows the following causes of demurrer, to wit:

1st. That the facts stated in each of said divisions do not, in law, constitute any defence to the plaintiff's action.

18 2. That the facts stated in each and all, neither collectively nor severally constitute any defence to said action.

H. SCOTT HOWELL & PLATT SMITH,
Counsel for Plaintiff.

Replication.

And afterwards, on the same day, was filed the following replication:

State of Iowa, circuit court of U. S.—November term, 1862.

J. EDGAR THOMPSON }
v.
LEE COUNTY, IOWA. }

The said plaintiff, by H. Scott Howell and Platt Smith, his attorneys, says the fourth division of defendant's answer is not true in fact. And he affirms the truth of the statements contained in the plaintiff's petition, and claims that said county judge did have full authority, in fact, to make and issue said bonds; and this he prays may be inquired of by the country.

H. SCOTT HOWELL & PLATT SMITH,
Counsel for Plaintiffs.

Amended replication.

19 And afterwards, to wit, on the 14th day of May, 1863, it being of the May term of the said court, the plaintiff, by leave of the court, filed the following amended replication:

United States circuit court for Iowa.—Replication.

J. EDGAR THOMPSON }
v.
THE COUNTY OF LEE. }

And now comes J. Edgar Thompson, plaintiff, by his counsel, H. Scott Howell and Platt Smith, and for replication to the answer of defendant herein, says:

1st. He denies each and all the affirmative allegations thereof except such as are hereinafter admitted.

He admits that Lee county is a municipal corporation and subdivision of the State of Iowa; that the Keokuk, Mount Pleasant and Muscatine Railroad Company" was and is a corporation, organized under the laws of Iowa, for the purpose of constructing a railway from Keokuk, Iowa, to Muscatine, Iowa, passing through the county

of Lee, Iowa; and that Samuel Boyles was, on the 1st January,
20 1857, county judge of said county, and on or about said date issued and delivered the bonds named in the petition to the railroad company; but,

2d. He denies that said Samuel Boyles, as county judge, had no authority in law to issue said bonds and coupons; denies that said bonds are not binding upon the county; denies that they are illegal, fraudulent, and void; denies that he had any knowledge of defendant's pretended defences thereto when he purchased the same.

PLATT SMITH & H. SCOTT HOWELL,
Plaintiff's Attorneys.

Entry—No. 71.

And afterwards, to wit, on the 15th day of May, it being still of the said May term of the said court, the following order and entry was made in the said cause, viz:

J. EDGAR THOMPSON
v.
THE COUNTY OF LEE.

On motion the plaintiff has leave to amend his replication.
21 The demurrer heretofore filed is withdrawn, and the defendant has leave to file an amended answer.

Trial and judgment—No. 71.

And afterward, on the 18th day of May, 1863, it being still of the same term of the said court, the following further order and entry was made in the same cause, viz:

J. EDGAR THOMPSON
v.
THE COUNTY OF LEE.

This cause now coming on for trial, the plaintiff appears by H. Scott Howell, esq., his counsel, and the defendant by Messrs. Hall and Sample, her counsel, and the issue being joined, comes a jury, to wit, E. B. Sampson and eleven others, twelve good and lawful men, who being duly sworn, the evidence being submitted and the counsel being heard, the jury retired to consider of their verdict.

And afterward the jury returned into court and rendered the following verdict, namely: We, the jury, find the issue for the defendant.

22 Whereupon it is considered by the court that the plaintiff take nothing by his petition, and that the defendant have and recover of the plaintiff her costs in this suit accrued, taxed at $34 95, and that execution issue therefor. And thereupon came the plaintiff and presented his bill of exceptions, which was signed by the judge and ordered to be filed.

Which bill of exceptions was and is in the words and figures following, to wit :

Bill of exceptions.

In the circuit court of the United States for the district of Iowa—May term, 1863.

J. EDGAR THOMPSON
v.
THE COUNTY OF LEE.

Be it remembered, that on the trial of this cause before the jury, the plaintiff, by his counsel, offered evidence as follows, namely :

1st. One original of each of the bonds described in the petition, the same as the exhibit to the petition.

2d. The original coupons sued on, being 167 coupons, in the sum of forty dollars each, the same as are described in the peti-
23 tion.

3d. Record of the proceedings of Lee county, Iowa, preliminary to, and concerning the issue of said bonds ; which record is now hereto affixed and made a part hereof.

4th. Three witnesses, who testified that a special tax was levied by the defendant for one or two years on the taxable property of said county, to pay the interest on said bonds ; and that said tax, or portions thereof, was received by the treasurer of said county from persons so taxed, payment being made in coupons of said bonds.

The above was all the evidence offered by either party.

Plaintiff's instructions.

The plaintiff, by his counsel, after the introduction of said evidence, asked the court to give the following instruction, to wit :

1st. If a bond, when made, was valid by the laws of the State, as then expounded by all departments of its government and administered in its courts of justice, no question can made as to the
24 validity of the contract, but the court will apply to such contract the law as fixed and determined in the State at the time it was made.

2d. In 1857, when the bonds sued on in this case are alleged to have been executed, the government of the State of Iowa had repeatedly and distinctly, in all the departments of its government, recognized and affirmed the authority of counties to subscribe for capital stock in railroad companies and to issue bonds in payment of their subscriptions ; and the law, as then understood and declared in the State, must govern and determine the question of the authority of counties to issue bonds for such purposes, and the authority of Lee county to issue bonds for such purposes, at the time mentioned, cannot now be denied.

3d. The county of Lee had legislative authority to issue bonds in payment of subscriptions to railroads, upon compliance with
25 certain forms and conditions prescribed by the statute.

4th. There is an act of the legislature of Iowa, passed subsequently to the date of the bonds in suit, confirming and declaring valid all bonds before executed by the county of Lee. This act is conclusive of the authority of Lee county to issue the bonds described in the act, and it makes no difference whether prior statutes requiring a vote of the people, and other acts, as preliminary to the issue of bonds, had been complied with or not.

The court refused so to instruct the jury. To the refusal to give said instructions, and each of them, the plaintiff excepted then and there.

Defendant's instructions.

And be it remembered, that the court, at the request of the defendant, instructed the jury as follows:

1st. That at the date of the coupons sued on in this cause there was no statute law in the State of Iowa, in which Lee county
26 is situated, authorizing the issue thereof.

2d. That unless plaintiff has shown, by competent proof to the satisfaction of the jury, that he is the owner of the bonds from which the coupons sued upon were cut, he has no cause of action in this case.

3d. That the submission to the people of Lee county, on September 10, 1856, and proceedings under said submission, are contrary to and in violation of the laws of the State of Iowa, and consequently void, and the act of January 29, 1857, called the "curative act," gave no validity to said bonds. It follows that said bonds, if based upon said submission and said act of the legislature, were and are issued without authority of law, and were and are fraudulent and void.

To the giving of said instructions, and each of them, the plain-
27 tiff excepted then and there.

Court's instructions.

Be it further remembered, that the court gave the following general instructions to the jury, namely:

That, under the evidence, the bonds were issued without authority of law, and are void.

To which the plaintiff, by his counsel, excepted then and there.

And the jury, being so instructed, rendered a verdict in favor of the defendant.

The plaintiff asks that this, his bill of exceptions, be signed and made a part of the record, which is done.

SAM'L F. MILLER, [SEAL.]
Presiding Judge.

Proceedings of county court.

Record of the proceedings of Lee county concerning the is-
28 sue of said bonds, offered in evidence by the plaintiff, and annexed to and made part of the bill of exceptions.

Proceedings in county court.

STATE OF IOWA,
Lee County, set:

Be it remembered, that at the session of the county court of Lee county, State of Iowa, held at the office of the County judge of said county, at Ft. Madison, in said county, August the 3d. A. D. 1856, the Hon. Samuel Boyles, sole judge of said court, presiding, among other proceedings were the following, to wit:

In the matter of the county subscription, to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to the Keokuk, Mount Pleasant and Muscatine Railroad Company, and to the Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company.

Order for election.

COUNTY JUDGE'S OFFICE, LEE COUNTY, IOWA,
August 3, *A. D.* 1856.

Application having been made by petition to the county judge
29 of said county, signed by more than one-fourth of the voters of Lee county aforesaid, asking to have a vote taken at the earliest practicable day upon the following propositions, to be voted for separately, at the same time and place, to wit:

Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Fort Des Moines and Minnesota Railroad Company?

Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Mount Pleasant and Muscatine Railroad Company?

Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company?

The said stock to be paid in twenty-years eight per cent. county bonds, the principal and interest payable in the city of New
30 York, the interest semi-annually, and that an annual tax may be levied sufficient, with the dividend arising from the stock so subscribed, to pay said interest; and asks that your honor's proclamation submitting said vote may contain a condition that the said subscription shall not be made to either of said companies unless the vote shall be carried in favor of each and all of them; and also, that the Keokuk, Fort Des Moines and Minnesota Railroad Company, and the Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company, and all persons claiming the county bonds on the old county subscription under them or either of them shall, upon receiving the bonds under the vote proposed to be taken, release to the county all claims to the said subscription heretofore voted them.

Election notice and affidavits.

And afterward, to wit, on the 18th day of September, A. D. 1856, the additional proceedings were had and recorded in words and figures as follows :

31 COUNTY JUDGE'S OFFICE. LEE COUNTY, IOWA,
September 18, *A. D.* 1856.

On this day the following copy of the election notice, and affidavits therewith, were this day filed in the office of the county judge of said county, to wit :

Election notice.

To the people of Lee county, Iowa :

Whereas petitions, signed in behalf of a large portion of the citizens of said Lee county, Iowa, have been presented to the undersigned, county judge of said county, asking that the question be submitted to a vote of the county, whether the county will aid in the construction of the "Keokuk, Fort Des Moines, and Minnesota railroad," the "Fort Madison, West Point, Keosauqua, and Bloomfield railroad," and the "Keokuk, Mount Pleasant, and Muscatine railroad," by subscribing the sum of one hundred and fifty thousand dollars to the capital stock of each of said railroad companies:

Now, therefore, in order that the sense of the voters of said county may be taken in the premises, it is hereby ordered, that a
32 special election be held in each township in said county, at the usual places of holding elections in said county, on Wednesday, the 10th of September, A. D. 1856, for the purpose of voting for or against the following propositions, to wit :

"Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Fort Des Moines, and Minnesota Railroad Company?"

"Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company?"

"Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Company?"

The said stock to be paid in twenty-year eight per cent. county bonds, principal and interest payable in the city of New York—the interest semi-annually. That in addition to the usual taxes, an annual tax not exceeding one per cent. on the county valuation,
33 and continued from year to year so long as the same is required, be levied, to be applied to the liquidation of the interest and principal of the bonds aforesaid, unless it is found that said interest and principal can be satisfied by the dividends arising from the sale of the stock above mentioned. The first year's interest is to be paid by the railroad companies, which is to be paid back to the companies out of the first dividends upon said stock arising

from the use of said roads. That said companies, upon issuing to them respectively county bonds, shall each be required to give bond in the penal sum of two hundred thousand dollars, or other security to the satisfaction of the county judge, conditioned that the money arising from the sale of said county bonds, or materials purchased with said bonds, be faithfully applied to the construction of said railroads in Lee county, Iowa, and that the highest market price that can, be obtained for the same.

That the county judge of Lee county aforesaid shall, in person or by proxy, represent the stock taken of said county in the companies aforesaid.

That the form of the ballot shall be, "For the county sub-
34 scription to the Keokuk, Fort Des Moines and Minnesota Railroad Company," or, "Against the county subscription to the Keokuk, Fort Des Moines and Minnesota Railroad Company;" "For the county subscription to the Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company," or, "Against the county subscription to the Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company;" "For the county subscription to the Keokuk, Mount Pleasant and Muscatine Railroad Company," or, "Against the county subscription to the Keokuk, Mount Pleasant and Muscatine Railroad Company."

A majority of votes for the county subscription to the Keokuk, Fort Des Moines and Minnesota Railroad Company, will be considered as adopting the above proposition to take stock in said railroad.

A majority of votes for the county subscription to the Fort Madi-
son, West Point, Keosauqua and Bloomfield Railroad Com-
35 pany will be considered as adopting the above proposition to take stock in said railroad.

A majority of votes for the county subscription to the Keokuk, Mount Pleasant and Muscatine Railroad Company, will be considered as adopting the proposition to take stock in said railroad.

That the said subscription shall not be made to either of said companies unless the vote shall be carried in favor of each and all of them; and also, that the Keokuk, Fort Des Moines and Minnesota Railroad Company, and the Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company, and all persons claiming the county bonds on the old county subscription heretofore voted them, shall, upon receiving the bonds under the vote proposed to be taken, release to the county all claims to the said subscription heretofore voted them.

It is further directed that the law governing elections shall, as far as compatible, be applied to the election herein ordered.

SAMUEL BOYLES,
Judge of Lee County, Iowa.

Affidavit of service.

36 COUNTY JUDGE'S OFFICE, *August* 3, 1856.

STATE OF IOWA,
Lee County, set:

D. W. Henry, upon his oath, states that he posted printed copies of the annexed election notice, at least four, in each of the following named townships, to wit: Green Bay, Denmark, Pleasant Bridge, Marion, Cedar, Harrison, Franklin, West Point, Washington, Madison, Jefferson, Charleston, Van Buren, Des Moines, Montrose and Jackson, at least four weeks before the tenth day of September, A. D. 1856.

D. W. HENRY.

Subscribed and sworn to before me, this 18th day of September, 1856.

In testimony whereof, I have hereto set my hand, and affixed [L. S.] the county seal of said county, the date aforesaid.

SAMUEL BOYLES,
Judge of Lee County, Iowa.

Affidavit.

STATE OF IOWA, *Lee County.*

Samuel Boyles, upon oath, states that he posted a printed
37 copy of the foregoing election notice up at the door of the court-house, in Fort Madison, in said county, at least thirty days before the 10th day of September, 1856.

SAMUEL BOYLES.

Sworn and subscribed before me, this 3d day of October, 1856.

ERIE J. LEECH,
Clerk District Court.
By JOHN A. NUNN, *Deputy.*

STATE OF IOWA, *Lee County.*

Affidavit of publication.

Benjamin Grossman, being duly sworn, says that he is one of the publishers of the "Fort Madison Plain Dealer," a weekly newspaper, published at Fort Madison, in said county, and that the annexed election notice, signed by Samuel Boyles, judge of Lee county, Iowa, was published for more than four consecutive weeks in said newspaper, prior to the 10th day of September, A. D. 1856, the first issue being

on the 8th day of August, 1856, and continued in said paper until the 10th day of September, 1856.

BENJAMIN GROSSMAN.

38 Sworn and subscribed before me this 18th day of September, 1856.

In testimony whereof I have hereto subscribed my name and affixed the seal of said county of Lee, at Fort Madison, the date aforesaid.

SAMUEL BOYLES,
[L. S.] *Judge of Lee County, Iowa.*

Abstract of an election "for the county subscription, and against the county subscription," held in the several townships of Lee county, State of Iowa, on Wednesday, the 10th day of September, A. D. 1856, in pursuance of the notice issued by the county judge, herewith annexed, and made a part of this abstract.

39

	Green Bay.	Denmark.	Pleasant Ridge.	Marion.	Cedar.	Harrison.	Franklin.	Washington.	Madison.	Jefferson.	Charleston.	Van Buren.	Des Moines.	Montrose.	West Point.	Jackson.	Total.
For the county subscription to the Keokuk, Fort Des Moines, and Minnesota Railroad Company	14	7	12	21	1	2	29	30	382	2	22	3	24	54	125	1,809	2,537
For the county subscription to the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company	14	7	13	21	26	2	29	30	382	2	21	2	24	54	125	1,807	2,559
For the county subscription to the Keokuk, Mount Pleasant, and Muscatine Railroad Company	13	7	13	21	2	2	29	30	382	3	22	2	24	54	125	1,808	2,537
Against the county subscription to the Keokuk, Fort Des Moines, and Minnesota Railroad Company	27	87	49	41	81	127	104	46	16	54	98	43	53	39	59	12	937
Against the county subscription to the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company	26	87	49	41	53	127	104	45	16	54	99	43	53	39	59	12	907
Against the county subscription to the Keokuk, Mount Pleasant, and Muscatine Railroad Company	88	87	48	41	80	127	104	45	16	54	99	43	53	39	59	12	935

Canvass.

40 There were three thousand and four hundred and seventy-four (3,474) ballots cast for the county subscription and against the county subscription to the Keokuk, Fort Des Moines, and Minnesota Railroad Company—of which there were two thousand and five hundred and thirty-seven (2,537) for the county subscription, and nine hundred and thirty-seven (937) against the county subscription to said road.

There were three thousand and four hundred and sixty-six (3,466) ballots for the county subscription and against the county subscription to the Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company—of which there were twenty-five hundred and fifty-nine (2,559) for the county subscription, and nine hundred and seven (907) against the county subscription to said road.

There were three thousand and four hundred and seventy-two (3,472) ballots cast for the county subscription and against the county

subscription to the Keokuk, Mount Pleasant and Muscatine Railroad Company, of which there were two thousand and five hun-
41 dred and thirty-seven (2,537) for the county subscription, and nine hundred and thirty-five (935) against the county subscription to the said road.

In testimony whereof, we, Samuel Boyles, county judge of said county of Lee, Henry M. Salmon and J. H. West, justices of the peace in said county, have hereunto subscribed our names as county canvassers; and the said Samuel Boyles, county judge as aforesaid, has hereunto affixed the seal of said county this 17th day of September, A. D. 1856.

SAMUEL BOYLES, *County Judge,*
[L. S.] J. H. WEST, *J. Peace,*
H. M. SALMON, *J. Peace,*
County Canvassers.

Final order.

STATE OF IOWA, *Lee County:*

COUNTY JUDGE'S OFFICE,
Fort Madison, Iowa, Sept. 18th, 1856.

Whereas the county judge in and for said county did, on the 3d day of August last past, issue and publish the following notice, to wit:

Election notice.

To the people of Lee county, Iowa:

42 Whereas petitions, signed in behalf of a large portion of the citizens of said Lee county, Iowa, have been presented to the undersigned, county judge of said county, asking that the question be submitted to a vote of the county, whether the county will aid in the construction of the Keokuk, Fort Des Moines, and Minnesota railroad, the Fort Madison, West Point, Keosauqua, and Bloomfield railroad, and the Keokuk, Mount Pleasant, and Muscatine railroad, by subscribing the sum of one hundred and fifty thousand dollars to the capital stock of each of said railroad companies:

Now, therefore, in order that the sense of the voters of said county may be taken in the premises, it is hereby ordered that a special election be held in each township in said county, at the usual places of holding elections in said county, on Wednesday, the 10th
43 day of September, A. D. 1856, for the purpose of voting for or against the following propositions, to wit:

Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Fort Des Moines, and Minnesota Railroad Company?

Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company?

Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Mount Pleasant, and Muscatine Railroad Company.

The said stock to be paid in twenty-year eight per cent. county bonds, principal and interest payable in the city of New York, the interest semi-annually; that, in addition to the usual taxes, an annual tax not exceeding one per cent. on the county valuation, and continued from year to year so long as the same is required, be levied, to
44 be applied to the liquidation of the interest and principal of the bonds aforesaid, unless it is found that said interest and principal can be satisfied by the dividends arising from or the sale of the stock above mentioned. The first year's interest is to be paid by the railroad companies, which is to be paid back to the companies out of the first dividends upon said stock arising from the use of said roads. That said companies, upon issuing to them respectively county bonds, shall each be required to give bond in the penal sum of two hundred thousand dollars, or other security, to the satisfaction of the county judge, conditioned that the money arising from the sale of said county bonds, or materials purchased with said bonds, be faithfully applied to the construction of said railroads in Lee county, Iowa, and the highest market price that can be obtained for the same; that the county judge of Lee county aforesaid shall, in person or by proxy, represent the stock taken by said county in the companies aforesaid.

That the form of the ballot shall be, "For the county sub-
45 scription to the Keokuk, Fort Des Moines, and Minnesota Railroad Company;" or, "Against the county subscription to the Keokuk, Fort Des Moines, and Minnesota Railroad Company."

"For the county subscription to the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company;" or, "Against the county subscription to the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company."

"For the county subscription to the Keokuk, Mount Pleasant, and Muscatine Railroad Company;" or, "Against the county subscription to the Keokuk, Mount Pleasant, and Muscatine Railroad Company."

A majority of the votes for the county subscription to the Keokuk, Fort Des Moines, and Minnesota Railroad Company will be considered as adopting the above proposition to take stock in said railroad.

A majority of votes for the county subscription to the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company
46 will be considered adopting the above proposition to take stock in said railroad.

A majority of votes for the county subscription to the Keokuk, Mount Pleasant, and Muscatine Railroad Company will be considered as adopting the proposition to take stock in said railroad.

That the said subscription shall not be made to either of said companies unless the vote shall be carried in favor of each and all of them; and also, that the Keokuk, Fort Des Moines, and Minnesota Railroad Company, and the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company, and all persons claiming the county bonds on the old county subscription heretofore voted them, shall, upon re-

ceiving the bonds under the vote proposed to be taken, release to the county all claims to the said subscription heretofore voted them.

It is further directed that the law governing elections shall, as far as compatible, be applied to the election herein ordered.

SAMUEL BOYLES,
Judge of Lee County, Iowa.

47 *Order.*

COUNTY JUDGE'S OFFICE,
August 3d, 1856.

And whereas the said county judge being satisfied that all the requirements of the statute in regard to such elections have been substantially complied with in the premises, and that the majority of the votes cast at the election on the 10th of September, 1856, mentioned in said "notice," were for the county subscription to each and all of said railroads;

Therefore notice is hereby given that all the propositions in said election notice are adopted.

SAMUEL BOYLES,
Judge of Lee County.

Fort Madison, Sept. 26, 1856.

Affidavit of publication.

STATE OF IOWA, *Lee County.*

A. Stoddard, being duly sworn, on oath says that he is one of the publishers of the Fort Madison Plain Dealer, a weekly newspaper published in Fort Madison, in said county, and that said foregoing election notice and proclamation, signed by Samuel
48 Boyles, judge of Lee county, Iowa, was published for more than four consecutive weeks, commencing 26th day of September, 1856.

A. STODDARD.

Subscribed and sworn to before me this 19th day of November, 1856.

ERIE J. LEECH, *Clerk D. C.*
By J. A. NUNN, *Dept.*

In testimony whereof, I hereunto set my hand and affix the seal of the dist. court, at Fort Madison, in said county, this 19th day of November, 1856.

[L. S.]

ERIE J. LEECH, *Clerk D. C.*
By JOHN A. NUNN, *Dept.*

Clerk's certificate.

STATE OF IOWA, *Lee County:*

I, Charles Dorr, clerk of the dist. court and ex-officio clerk of the board of supervisors, hereby certify the foregoing to contain a true

copy of the record entries made in the above-entitled matter, as the same now remain of record in my office.

Witness my hand and seal of office, at Fort Madison, this 7th day of April, 1863.

CHARLES DORR,
Clerk Dist. Court.

[Rev. stamp.]

49 UNITED STATES OF AMERICA,
District of Iowa:

I, W. G. Woodward, clerk of the circuit court of the United States in and for the district of Iowa, hereby certify that the foregoing forty-eight pages of writing constitute a full, true, and complete transcript of the record and proceedings in the aforesaid court, of the above-named cause of J. Edgar Thompson against the county of Lee, as the same now remain of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court, at Des Moines, Iowa, this the 3d day of October, A. D. 1863.

[SEAL.]

W. G. WOODWARD,
Clerk as aforesaid.

Transcript, $9 45.

[Rev. stamp.]

Citation.

50 UNITED STATES OF AMERICA, *ss:*

To the county of Lee, in the State of Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and district of Iowa, wherein J. Edgar Thompson is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel F. Miller, one of the justices of the said Supreme Court of the United States, this 30th day of May, in the year of our Lord 1863.

SAM. F. MILLER, *Justice.*

51 This notice came into my hands July 25, 1863. Served the within notice by reading the same to Charles Doerr on the 28 day of July, in the city of Keokuk, Lee county, Iowa; I also left with him a true copy of this notice at the same time and place, Doerr, he being the county clerk, also clerk of the board of supervisors. I also served the within notice on the county of Lee, by reading this notice to Robert A. Russell, county judge of said county of Lee, in the town of Fort Madison, Lee county, Iowa. On the 29 day of July,

1863, I also left with him a true copy of this notice the same time and place. I also read the within notice to H. M. Salmon, president of the board of supervisors of the county of Lee, Iowa, on the 29 day of July, 1863, in the town of Fort Madison, Lee county, Iowa. I also left with him a true copy at the same time and place.

H. M. HOXIE, *U. S. M.*
By H. FULTON, *Dept.*

Marshal's fees.

Service on 3····	$6 00
3 copies·····	75
Miles, 192·····	11 52
	18 27

Filed Aug. 3, 1863.

W. G. WOODWARD,
Clerk C. C. U. S. for Iowa.

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the ninth circuit, and district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court, before you, between J. Edgar Thompson and the county of Lee, in the State of Iowa, a manifest error hath happened, to the great damage of the said J. Edgar Thompson, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the seventh day of De-
53 cember next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court of the United States, this eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

Witness my hand and the seal of the circuit court of the United States in and for the district of Iowa.

[SEAL.] W. G. WOODWARD,
Clerk of the said Circuit Court.

In obedience to the foregoing writ of error, I hereto annex a transcript of the proceedings, record, and judgment of the said cause of J. E. Thompson *v.* The county of Lee.

W. G. WOODWARD,
54 *Clerk of the Circuit Court of the U. S. for Iowa.*

55 UNITED STATES OF AMERICA, *ss:*

To the county of Lee, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and district of Iowa, wherein Evans Rogers is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel F. Miller, one of the justices of the said Supreme Court of the United States, this 3d day of Aug., in the year of our Lord 1863.

SAM. F. MILLER,
Asso. Just. S. C. U. S.

56 Due and legal service of this citation admitted on this Nov. 26th, 1863, by the undersigned, attorneys for the defendant in error, the county of Lee. J. C. & B. J. HALL,
Attorneys for defendant in error.

Nov. 26th, 1863.

1863, I also left with him a true copy of this notice the same time and place. I also read the within notice to H. M. Salmon, president of the board of supervisors of the county of Lee, Iowa, on the 29 day of July, 1863, in the town of Fort Madison, Lee county, Iowa. I also left with him a true copy at the same time and place.

H. M. HOXIE, *U. S. M.*
By H. FULTON, *Dept.*

Marshal's fees.

Service on 3	$6 00
3 copies	75
Miles, 192	11 52
	18 27

Filed Aug. 3, 1863.

W. G. WOODWARD,
Clerk C. C. U. S. for Iowa.

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the ninth circuit, and district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court, before you, between J. Edgar Thompson and the county of Lee, in the State of Iowa, a manifest error hath happened, to the great damage of the said J. Edgar Thompson, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the seventh day of De-
53 cember next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of said Supreme Court of the United States, this eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

Witness my hand and the seal of the circuit court of the United States in and for the district of Iowa.

[SEAL.] W. G. WOODWARD,
Clerk of the said Circuit Court.

In obedience to the foregoing writ of error, I hereto annex a transcript of the proceedings, record, and judgment of the said cause of J. E. Thompson *v.* The county of Lee.

W. G. WOODWARD,
54 *Clerk of the Circuit Court of the U. S. for Iowa.*

55 UNITED STATES OF AMERICA, *ss:*

To the county of Lee, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and district of Iowa, wherein Evans Rogers is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel F. Miller, one of the justices of the said Supreme Court of the United States, this 3d day of Aug., in the year of our Lord 1863.

SAM. F. MILLER,
Asso. Just. S. C. U. S.

56 Due and legal service of this citation admitted on this Nov. 26th, 1863, by the undersigned, attorneys for the defendant in error, the county of Lee. J. C. & B. J. HALL,
Attorneys for defendant in error.

Nov. 26th, 1863.

IN THE

Supreme Court of the United States.

J. EDGAR THOMSON,
Plaintiff in Error.

vs.

THE COUNTY OF LEE,
Defendant in Error.

NO. 193.
December Term, A. D. 1864.

BRIEF AND "ABSTRACT OF THE CAUSE."

By Plaintiff in Error.

IN THE
Supreme Court of the United States.

J. EDGAR THOMSON,
Plaintiff in Error,
vs.
THE COUNTY OF LEE,
Defendant in Error.

NO. 193.
December Term, A. D. 1864.

BRIEF AND "ABSTRACT OF THE CAUSE."

By Plaintiff in Error.

THE PLEADINGS.

In 1862, J. Edgar Thomson brought his "action" against the the County of Lee, Iowa, upon one hundred and sixty-seven "Rail Road Coupons," of $40, each; claiming a judgment for the sum of $10,000. The suit was first brought in the United States District Court, Iowa. But, under the provisions of the late statute creating a new district, it was transferred, *pendente lite*, to the United States Circuit Court, for the District of Iowa, and there tried.

The "petition" is in the usual form under the Code Practice of Iowa, adopted by each of said courts. Defendant, being duly

served with "notice," appeared by Counsel and filed an answer. Plaintiff at first demurred to a part of same, but afterwards withdrew his demurrer; and the issues were joined by his replications to said answer.

On the 19th of May, 1863, the case was tried, and submitted to a Jury upon the evidence, and under the written instructions of the Court; and the Jury by direction of the Court returned a verdict for Defendant.

Plaintiff took his bill of exceptions at the time to the action of the Court, which was allowed, signed and filed, and bond having been given, and approved; the plaintiff below, brings the case into this Court upon a writ of error and makes the following

ASSIGNMENTS OF ERROR.

1st. The Circuit Court erred in charging the jury that the bonds, or coupons sued on, were issued without authority of law, and were void.

2d. That the "Curative Act," of January 1857, gave no validity to said bonds.

3d. That plaintiff could not recover on the Coupons unless he showed he also owned at the time the several Bonds from which they were cut.

4th. And that the Court further erred in refusing to charge the jury, as requested by plaintiff, that if all branches of the State government of Iowa, had held such Railroad bonds to be valid, at the time same were issued: no question could afterwards be made as to their validity.

5th. That in fact, all branches of the government of Iowa: the Legislative, Judicial and Executive, had determined that counties had the constitutional right, to take stock in railroads, in said State, and issue bonds therefor.

6th. That the County of Lee had the right to subscribe such

stock, and issue such bonds, on complying with certain requirements of the statute.

7th. And that although the bonds in question may have been irregularly issued, yet if the Legislature of Iowa afterwards passed an act declaring said bonds valid, such act was conclusive upon the county to deny same.

THE FACTS AND DOCUMENTS,

Upon which this action is founded, are as follows:

By a vote of the people of said county, cast at a special election, a large majority, about three to one, decided that Lee County should take stock in certain railroads terminating within her borders, and issue her corporate bonds for a corresponding amount, running twenty years, and drawing eight per cent. interest, payable semi-annually in New York.

In accordance with said vote, such bonds were executed, having coupons attached. They were all dated 1st January, 1857, executed in Iowa, and made payable at a bank in City of New York. Here is a copy of one of the coupons:

$40. FORT MADISON, IOWA, JANUARY 1st, 1857.

The County of Lee, Iowa,

Promises to pay the Bearer, at the CONTINENTAL BANK, *in the City of New York, on the first day of July*, 1859, FORTY DOLLARS, *interest due on Bond No.* 50.

S. BOYLES, *County Judge.*

An important fact, relied upon by the defendant, is, that the county was to take one hundred and fifty thousand dollars stock in each of three different railroads; and that the subscription was not to be made to either of the said railroads, unless there was a majority of votes of her citizens cast in favor of each and all of said roads.

The record runs thus:

On August 3d, 1856, a petition signed by one-fourth (and more) of the voters of the said county was filed in the County Judge's office, asking to have propositions to subscribe stock to said railroads, submitted to the people.

On the 10th September, 1856, an election was held in Lee County, in accordance with law, the questions submitted being "for" or "against" the subscriptions of stock to said three railroads, in the manner aforesaid; at which election there was a majority of about three to one in favor of each and all of said railroads; and, thereupon, the stock was subscribed, and the bonds were issued and delivered to the railroad companies, and they sold or hypothecated them for money, to build the roads. For one or two years the taxes (which were also duly authorized by votes of the people) were assessed and collected, and the coupons first maturing taken up.

The laws and statutes of Iowa, in respect to the corporate powers of counties, their right to execute such obligations, and the enactments legalizing same, we wish to refer to, are,

Sections 114, 115 and 116, chapter 15, Code of Iowa, 1851.

Chapter 128, page 192, Laws 1855, approved January 25, 1855, entitled. "BONDS. *An act regulating the interest on city and county bonds.*"

Chapter 149, page 219, Laws of Iowa, 1855, approved 25th January, 1855, entitled. "COUNTY AND CORPORATE BONDS. *An act regulating the issue of county and corporate bonds.*"

Chapter 258, Laws of 1857, page 447, approved — January, 1857, entitled, "CORPORATE BONDS. *An act legalizing the issue of county, city, and town corporation bonds in the counties of Lee and Davis.*"

Also, in same general laws 1857, to chapter 153, page 227; chapter 216, page 374; and chapter 243, page 495.

And thereupon, we hold that said bonds and coupons in the hands of plaintiff, are valid and binding upon the county; and that the Court below erred in directing the jury, as it did, to find against him.

The record and history of the successive suits, brought by *Eli*

McMillen, et al, vs. *The County Judge of Lee County, Iowa, et al.*, will be referred to and relied upon to defeat plaintiff in his present action.

Upon the case thus evolved in the record before this court, we submit the following

POINTS AND SUPPORTING AUTHORITIES.

I

The County of Lee, Iowa, did have the right, under the constitution and laws of said State, to execute and issue the railroad bonds, aforesaid.

The provision of article 7, § 1, of the Constitution of the State of Iowa, of A. D. 1846, which limited the State indebtedness, to the sum of $100,000; and also, article 8, § 2, which provides that the State shall not become a stockholder in any corporation, *apply only to the State in her sovereign capacity.*

This we regard as *res adjudicata.*

Dubuque County, vs. *Dubuque and Pacific R. R. Co.*, 4 Green, 1—16.

State ex rel., vs. *Bissell, County Judge*, 4 Green, 328.

Clapp vs. *The County of Cedar*, 5 Iowa, 15—61.

Ring vs. *Johnson County*, 6 Iowa, 265.

Eli McMillen, et al., vs. *Boyles, County Judge Lee County*, 6 Iowa, pages 304 and 391. Two opinions in same case. See *errata* in vol.

Games vs. *Robb*, 8 Iowa, 193.

Herman Gelpecke, et al., vs. *The City of Dubuque: Myer and Stucken*, vs. *City of Muscatine:* December Term, 1863, Supreme Court, United States.

II.

Under State Constitutions, more or less similar to that of Iowa, the highest judiciary tribunals of at least twelve other States have held the power to exist, and the right to confer it upon cities and counties. I cite only one case from each State; but

many of these have been affirmed and approved in other cases—viz.:

VIRGINIA—in *Goddin* vs. *Crump*, 8 Leigh, 120.

CONNECTICUT—in *City of Bridgeport* vs. *Housatonic R. R. Co.*, 15 Conn. 475.

TENNESSEE—in *Nichols, et al.*, vs. *Mayor and Aldermen of Nashville*, 9 Humphreys, 252.

KENTUCKY.—in *Talbott* vs. *Dent*, 9 B. Monroe, 526.

PENNSYLVANIA—in *The Commonwealth ex rel.*, vs. *McWilliams, et al.*, 11 Penn. State R., 61.

ILLINOIS—in *Shaw* vs. *Dennis*, 5 Gillman, 405.

OHIO—in *Cass* vs. *Dillon*, 2 Ohio State R., 607.

MISSOURI—in *City of St. Louis* vs *Alexander*, 23 Mo., 483.

NEW YORK—in *Bank of Rome* vs. *Village of Rome*, 18 N. Y., 38.

INDIANA—in *City of Aurora* vs. *West, et al.*, 9 Ind. 74.

SOUTH CAROLINA—in *State, ex rel., Caper*, vs. *City of Charleston*, 10 Richardson, 491.

WISCONSIN—in *Clark* vs. *City of Janesville*, 10 Wis., 136.

III.

This Court has fully recognized the same principle in

The Board of Commissioners, vs. *Aspinwall, et al.*, 18 Howard, 539.

Same vs. *Wallace*, 18 do., 547.

Zalenkie vs. *The Cleveland, Columbus and Cincinnati Railroad Co.*, 23 Howard, 381.

Amey vs. *The Mayor, Aldermen and Citizens of Alleghany City*, 24 Howard, 365.

The Board of Commissioners of Knox County vs. *Aspinwall et al.*, 24 Howard, 376.

Herman Gelpecke, et al., vs. *City of Dubuque*, December Term, 1863.

IV.

The power existing under the Constitution of Iowa, for counties to take stock in railroads, and issue bonds, &c., the General Assembly may, and did cure or correct any defective, or irregular exercise of it, in respect to these particular bonds or coupons sued on.

Curative Act of — January, 1857. Chapter 258, Laws 1857, page 447.

This act has been held to be valid by the Supreme Court of Iowa.

Eli McMillen, et al., vs. *Boyles, County Judge of Lee County*, 6 Iowa, 304 and 391.

The same principle has been held in

Wilkinson vs. *Leland*, 2 Peters, 627.

Satterly vs. *Mathenson* 2, do. 380.

Baltimore and S. R. Co. vs. *Nesmith et al.*, 10 Howard, 395.

Whitewater Valley Canal Co. vs. *Valette*, 21 Howard, 425.

Herman Gelpecke et al. vs. *City of Dubuque*, December term 1863.

V.

There is nothing in the record and decision of the succesive suits of *Eli McMillen, et al.* vs. *Boyles, County Judge, &c.*, 3, Iowa, 311, and 6, Iowa, 304, and 391, which should prevail to prevent plaintiff in error from obtaining judgment on his coupons. For that,

1st. Because he was neither party nor privy to any of said injunction proceedings.

2d. Because the irregularities complained of in the first of said three suits, have been cured by subsequent legislation—the "Curative Act" of 1857.

3d. Because the decision of the first of the said suits was had in the Supreme Court of Iowa, on the 15th of January, 1857, (See 3 Iowa, page 311) and on 1st June 1857, the petition for the re-hearing of this suit was withdrawn, and *here endeth the*

first McMillen suit. No further action has ever been had therein. The case was never returned to the District Court from which it was appealed, and no procedendo ever issued for that purpose. ☞Thirteen months after this, to-wit: on 26th February 1858, the same Eli McMillen, et al., filed in same District Court a *new petition* against S. Boyles, County Judge, and Robt. McFarland, County Treasurer; containing new allegations and asking for entirely different relief: while in the mean time all the bonds had been issued and delivered to the railroad companies, and by them sold in the market. All this will appear from the allegations of their second petition, (See pages 12 to 14 of defendants' printed argument) and an examination of the records of the cases, and reports of the Supreme Court.

The suits are not continuous and hence there is no *Lis Pendens* to purchasers. See

Ferrier vs. *Buzick*, 6 Iowa, 288.

Davis vs. *Bonar, et al.*, 15 Iowa, 175.

4th. Because the chief question sought to be determined in the second of the said McMillen suits, to-wit: the validity of the "Curative Act," was decided against petitioners, by both the District and Supreme Courts of Iowa. See 6 Iowa, 391.

5th. Because the third suit by *McMillen et al.*, vs. *Boyles et al.*, filed in the District Court, Lee County, Iowa, 28th July, 1860, to "revise the action of the Supreme Court of Iowa," is a nondescript—novel in its inception—peculiar alike in the pleadings of both parties—irregular in its transmutations through two District Courts—but culminating in the more than extraordinary *nunc pro tunc* "decree" of the Supreme Court of Iowa; perpetually enjoining the collection of said Railroad tax!

On the respective jurisdiction of these District and Supreme Courts of Iowa. See Article 5, Judicial Department, Constitution of Iowa, and Sections 2631, 2663, Revision 1860.

6th. This denouement of Eli McMillen and his co-adjutors, is certainly something new, even in Railroad Bond cases; but we hold it is patent from the record of this matter, that this remarkable "decree" was not obtained in the ordinary adjudication of

the Supreme Court of Iowa, but by imposition upon that Court, by the "consent" and fraudulent collusion of the counsel representing the county in said action, with plaintiffs' counsel: and hence said "decree" is void.

VI.

The court below charged the jury "that unless plaintiff had shown by competent proof to the satisfaction of the jury, that he was owner of the bonds from which the coupons sued upon were cut, he had no cause of action." (See Instructions No. 2, requested by defendant.) This is error, for this court in the case of *The Board of Commissioners of Knox County*, vs. *Aspenwall*, *Supra*. held just the opposite.

VII.

The Circuit Court refused also to say to the jury, as requested in the first instruction asked by plaintiff:

"That, if a bond when made was valid by the laws of the State as then expounded by all departments of its government and administered in the courts of justice, no question can be made as to the validity of the contract, or the law as fixed and determined in the State at the time it was made."

In this the court also erred. for it will be seen in this instruction we substantially quoted the words of TANEY, C. J. in

Ohio Life Insurance and Trust Company vs. *Debolt*, 16 Howard, page 416. Affirmed in

Herman Gelpecke, *et al.* vs. *City of Dubuque*, December Term 1863.

Upon the cause and authorities thus presented, we hold it as clear the Circuit Court erred in stating the law to the jury, and that this case must be remanded to that court, with directions that plaintiff have judgment upon his coupons, for the face thereof, interest and exchange.

A Scott, Harrell & c

JAMES GRANT,

Attorney for Plaintiff in Error.

IN SUPREME COURT UNITED STATES,

Pending for Hearing at December Term, 1864.

J. EDGAR THOMPSON,
vs.
LEE COUNTY, IOWA.

ARGUMENT FOR DEFENDANT IN ERROR.

This cause is brought into this court by plaintiff in error, who was plaintiff below from the Circuit court for the District of Iowa. It was founded upon coupons issued in connection with certain bonds of the county of Lee, Iowa, to exchange for stock in certain Railroad Companies. The answer by the county was, that the issue of those bonds was illegal and void, which answer was sustained by the court below, and said ruling of the Circuit Court is the error complained of, and assigned in this court.

The entire character and bearing of the cause will be readily comprehended, on examination of a certified copy of the election record of Lee County, made part of plaintiff's declaration as an exhibit; and of defendant's answer—all of which the Court is respectfully urged to inspect.

We enter upon the argument of this cause under circumstances of great embarrassment indeed. Within the last year two cases from Iowa, apparently embracing the same questions and covering the same ground, to-wit: Herman Gelpecke, et al, *vs.* the City of Dubuque, (two cases in one,) and Myer & Stuckon, *vs.* the City of Muscatine, have been presented to and considered by this court, and the members of which, except Justice Miller, of Iowa, concurred in sustaining.

At first blush we will be condemned as presumtuous and bold, by every member of this court, who concurred in the former

decisions, in again attempting to ask the considerations of these apparently same questions again. We readily concur in the sentiment of a great statesman of this country, now dead, that the sober second thought of people or court is generally right, and ought to be conclusive, and this first impression of the court would also be ours, were our places and conditions reversed.

To extricate ourselves from the embarrassment created by these circumstances and the first impression, and, if possible, to arrest and obtain the attention of this court, permit us to say, which we do in all sincerity and honesty, and in full remembrance of our professional obligations to this court, as sworn attorneys thereof:

1. That the case we put is not the same as those mentioned.

2. That it is so very dissimilar as to make the decisions referred to almost entirely inapplicable to it.

3. That the real merits of those two cases do not seem to us to have been presented to the court; at least the opinions delivered—which are before us—fail to notice the constitutional provision, which constitutes the foundation of our defense.

4. We say that, in our judgment at least, no similar case has ever been presented to any court on this continent, and but two or three that are analogous to it.

In the course of our argument we hope, and in honesty of purpose, intend to make all this apparent and comprehensible to the court.

There exists, to us at least, another momentous reason why another effort should be made to put this Railroad bond controversy fully to this court upon all its merits and demerits; and this is the widely dissimilar views taken by, and the great antagonism between this court and the highest judicial tribunal of the State of Iowa. This court declares the entire class of claims, of the nature of those sued on in this cause, to be valid and binding on the several municipalities of Iowa that issued them, and that they must be paid. The Supreme Court of Iowa declares them null and void from the beginning, on constitutional and legal grounds, and, by injunction, commands the municipal authorities to cease payment of them *in to-to*.

We have been taught from infancy to consider this tribunal as the most elevated in learning and integrity of any on the globe. In the State of our adoption we elect our Supreme Judges. We aided with our votes and support in the election of each and all the Judges that have participated in our Railroad bond decisions, (except, perhaps, the two first,) and in them, up to this hour, our confidence is unimpaired.

It is very singular and passing strange to us that legal minds of the highest order, and of the purest integrity, from inspection of the Constitution and Laws of Iowa, and the several municipal election records, should arrive at such opposite conclusions. It is an awful comment on the frailty of humanity, and of humanity in its highest and most exalted condition.

This antagonism not only exists, but this court holds toward that court language of most terrible severity and significance.

"*We shall never immolate truth, justice and the law, because a State tribunal has erected the altar and decreed the sacrifice.*"

This implies that the Supreme Court of Iowa has, on its own motion, erected an altar on which it has immolated truth, justice and the law. If this is so, it is lamentably defective in legal knowledge, or basely and wickedly corrupt, and deserves to be so branded; indeed we think, under the view entertained by the court, the language is moderate.

But is it not possible that there is a misunderstanding of the matters involved by the one court or the other, and that further discussion may remove it? Surely it must have been with deep regret that this court felt bound to use such language toward a respectable and respected supreme judicial tribunal of a State; and surely it will be willing to hear that court, through its friends, in vindication of its position and policy, and surely it will not feel unkindly toward us if we attempt its vindication, and humbly say to this court, that it is our conviction that neither the law nor the facts of the case have been fully put in its possession, and hence it is possible that it may not have arrived at the proper conclusions on the subject.

We feel a confidence, binding and unwavering, that this court will, upon respectful and candid suggestion of error, examine it, and, in the end, do right, without fear, favor, or respect for classes or individuals.

The great controlling fact, in the cases alluded to, seems to be, that the securities sued on were strictly commercial paper, in the hands of innocent purchasers for value, without notice.

When a corporation, under any circumstances, issues negotiable securities, the *bona fide* holder has a right to presume they were issued under the circumstances which gave the requisite authority, and they are no more liable to be impeached for any informality in the hands of such holders than any other commercial securities.

We desire here to state to the court, that in the present case no such state of things exists, but on the contrary, plaintiff and the commercial world were fully notified by suit of the in-

firmities of the paper, and plaintiff purchased it with suit pending against its issue, involving the questions we make.

The cases mentioned were against cities. This is against a county. No objection was raised against their bonds, as far as is comprehensible to us, until sale and realization of the proceeds. Credit is asked, money obtained and used for benefit of cities, and then when payment is demanded, bonds and coupons are repudiated. In our case suit was instituted before bonds were or could be issued; was kept in existence with various success, until it resulted in an injunction from the Supreme Court of Iowa, restraining Lee County authorities from assessing or collecting taxes to pay this (so called) indebtedness.

These city cases very much resemble, if they are not quite, cases of repudiation. We who were overwhelmed in an election by a majority, at once appealed to the courts of our State to give us the benefit of existing constitutional guarantees against oppression by such majority, secured after much quibbling and delay the relief we sought, and now stand in defense of our county whom we have procured to be enjoined and restrained from levying taxes upon us for payment of these bonds. The man whose bonds were extorted from him, by placing a pistol at his bosom, and threatening his life, might as justly be charged with repudiation when interposing the plea of duress.

We aver most solemnly that our fundamental law was made to prevent the oppression of minorities by majorities, as in this case. The paltry questions made in the cases cited dwindle into insignificance with the one we make, and which we think fairly arises in this case.

It is whether a contract made between the sovereign power existing in the whole people, on the one hand, and the subject of that sovereignty upon the other, shall take precedence over a contract for the issue and payment of bonds, made in defiance and violation of such fundamental contract, in the hands of purchasers with notice.

This question lies at the very foundation of civil liberty in America, and is worthy of the most serious consideration and investigation of this or any other court.

If we are right, and make ourselves understood by this court, it seems to us we must and will succeed in our defense.

Before entering upon the history and facts of this case, we ask permission to call the attention of the court to a position or two, which, in the course of our argument, we will try to support by authority.

1. As a general principle, citizens of this Government have

a full and complete right to form a Constitution, in accordance with their own views of propriety, and protection in the State into which they are entering, subject only to the restrictions and exceptions contained in the Constitution of the United States.

2. The first and great exception is, that the Government formed must be republican in its nature and form.

3. The second, and only other we need notice, is, that it shall not authorize, and the Government created by it shall not pass *ex post facto* laws, *or laws violating contracts.*

Of the first of these exceptions it is not the province of this court to enquire. The question belongs exclusively to Congress, and was passed on by that body when Iowa was admitted into the Union.

If Iowa has put herself within the material branch of the *second*, the passing of laws impairing the obligation of contracts made *bona fide*, we most fully concede the judicial power and the right and duty of this court to correct us.

This brings us to the leading and turning enquiry in the case, to-wit: May a State in the formation of her fundamental law, prohibit the sovereignty created, from entering upon the construction of works of internal improvement, either by herself as a State, or through her subordinate municipal corporations, without putting herself in conflict with the Constitution of the United States, on the subject of impairing contracts.

With these preliminary observations we proceed to lay before this court the law and facts of our case as we understand them. And permit us to express the desire that our positions will be examined by the court for itself; our several positions be answered or conceded to be sound, and if found unsound, that our fallacies be pointed out with the well-known and conceded powers of this body, so that they will be apparent to ourselves.

As the basis of our defense we rely on the Constitution of the State of Iowa, adopted in 1846—our first Constitution. We ask its careful and critical examination, *and in case this court persists in its refusal to be governed by our own interpretation, we humbly ask that it will interpret the instrument for itself.*

We next ask the attention of the court to the law on which the right of municipal corporations is placed by the advocates and supporters thereof. It is found in the code of Iowa of 1851, (which will be found in the Government library,) chapter 15, headed "County Judge," found on page 21 of that book—

Sec. 114 of the law is the particular section which it is claimed gives the power.

Section 26 of said law, found on page 6, will necessarily be examined in connection therewith, also Section 119, on page 25, chapter first mentioned.

Under this chapter fifteen, the election proceedings were had, which, as it is claimed, resulted in authorizing Lee County to issue the bonds and coupons in suit.

We next ask attention to a certified copy of the election record, exhibited as part of plaintiff's declaration. The copy is presumed to be *verbatim*, and is given at length.

Next we show certified copy of petition, filed by us on 15th October, 1856, together with demurrer and joinder therein, agreement of counsel, and all action of the courts therein, except the opinions of our Supreme Court, which the Court is respectfully requested to read from the books of report, number and pages whereof will be pointed out. They are as follows:

PETITION.

To the District Court of Lee County, at Fort Madison:

Your petitioners, Eli McMillan, Eli Seely, Absalom Anderson, Alexander McGreer, William Campbell, E. S. McCullough, Benjamin C. Burt, John F. Waldron, Samuel Borland, Samuel Mallory, George W. Browning and William Robinson, respectfully represent,

That Hon. Samuel Boyles, Judge of Lee County aforesaid, by virtue of certain proceedings recorded in this office, a certified copy whereof is herewith exhibited, marked "Exhibit A.," and made a part hereof, is about very soon, in his capacity as County Judge, and for the use and benefit of, and in the name of said County, to take stock in three several Railroad Companies, to-wit: The Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company; the Keokuk, Fort Des Moines and Minnesota Railroad Company, and the Keokuk, Mount Pleasant and Muscatine Railroad Company, to the amount of one hundred and fifty thousand dollars in each of said companies, making in the aggregate the sum of four hundred and fifty thousand dollars, for which he is to, and it is believed will, issue the bonds of said County, payable twenty years after date, and bearing eight per cent. interest from date, and payable in the city of New York, the interest semi-annually. That to provide for the payment of the interest and principal of said bonds, an annual tax, not exceeding one per cent. on the County valuation, is proposed by the proceedings aforesaid, to be levied upon the real and personal property of

the County of Lee aforesaid, as long as the same may be necessary for that purpose.

That said County Judge or his successor in office shall, in person or by proxy, represent the stock taken by said County in said companies.

That said proceedings, purporting to authorize the taking of the stock and issuing of the bonds aforesaid, is entered upon the minute book in the county Judge's office, in said Lee county.

That they are each residents of said Lee county, Iowa, and own real and personal property, subject to taxation therein, in the aggregate, to an amount not less than one hundred thousand dollars, which property, in connection with that of their fellow-citizens of said county, must be effected, and they believe injuriously, by the taking of said stock and issuing of said bonds, to be provided for by taxation in the manner stated.

That the number of persons interested in the question presented, is so great as to render it impracticable to bring them all as plaintiffs before this court.

That from their own knowledge and advice of counsel on whom they rely, they believe that the County Judge of Lee County has not, nor cannot have conferred upon him or his county by legislative enactment under the Constitution of the State of Iowa, the power to take stock in a corporation as being attempted to be done in this case. And that if such power can be exercised under said Constitution, it can only be done in one case at the time, and not by uniting two or more projects together as in the case here presented.

That from their own knowledge and advice as aforesaid, it is their conviction and belief, that under the code of Iowa, no power is given to a County Judge, or to a county, to pursue the course complained of in the present case, and that if such is law, the same has not been complied with as will appear by inspection of the records in the case.

That as they are advised and verily believe, the entire proceedings as set forth and exhibited in the file of papers marked A, are without authority of or foundation in constitutional or statute law, and therefore void from the beginning and *in toto*, and if suffered to be carried out to completion as seems to be intended, they severally, as well as a great number of their fellow citizens, will be seriously injured and damaged thereby.

That the certified copy of the proceedings exhibited are not full and complete, but as far as could be obtained at the time,

the entire record not being made up, nor ready to be made up, the proceedings not being complete until full publication of notice which will be about the 24th of October, 1856, three days only before the sitting of this Court. The election record given, was considered sufficient, and on it litigation is based, up to this time.

They therefore pray that the entire proceedings before the County Judge aforesaid, when made up and complete may be considered a part of this petition and be inspected and acted upon accordingly, or petitioners be permitted to attach hereto a certified copy of the remainder thereof, when the same shall be completed.

They further pray that said Samuel Boyles in his capacity of County Judge, as aforesaid, and said Lee County, Iowa, represented by him, be made a party or parties to this bill. And that upon hearing hereof the said proceedings above complained of be declared by proper decree of this court, illegal and void, and as an independent means of relief, an injunction be allowed them to restrain, enjoin and prevent the said County Judge and all persons hereafter acting in that capacity in said county, and the said county itself, from proceeding any further in the said premises, and particularly and especially from issuing the bonds aforesaid, or subscribing the stock aforesaid.

They also ask for such other and further relief as they may be entitled to in a court of equity.

FRANCIS SEMPLE,
Attorney for Plaintiff.

DEMURRER.

ELI McMILLAN, et. al.
vs.
COUNTY OF LEE AND COUNTY JUDGE. } Bill in Chancery.

And now comes said defendants by Geo. C. Dixon, their attorney, and demur to said plaintiff's petition, and say that the matters and things therein set forth are not sufficient in law to entitle the plaintiffs to any relief or injunction against said defendants.

And for cause of demurrer said defendants aver that said proceedings in regard to said "~~writ~~" were all regular, and in accordance with the constitution and laws of this State, and were valid and effectual, and ~~confirmed~~ complete legal powers and authority upon said County Judge, and of said defendants to subscribe for said "state," and to issue said bonds of said county for the amounts to be distributed in proportion, and

payable in the manner as is stated in said petition and proceedings thereto attached. Wherefore, said defendants pray judgment, and that said bill be dismissed with their costs.

GEO. C. DIXON, Attorney for Defendant.

And now comes said plaintiff and join in demurrer, and pray the relief and injunction asked for in their petition.

F. SEMPLE, Attorney for Plaintiffs.

Filed October 29th, 1856. ERIE J. LEECH, Clerk D. C.

ELI McMILLAN,
vs.
LEE COUNTY.

In this case it is agreed and intended to present this case upon above demurrer and joinder therein so as fully and fairly to raise and have determined the questions raised by the bill, to-wit: The constitution and legal power of the county of Lee to vote for such Railroad subscriptions, so as to render them valid and binding upon the county, and to issue bonds in payment thereof, as set forth in said petition, disregarding technicalities for the purpose of presenting the questions and having them decided. And further, that the record exhibited in the bill shall be considered as full and complete, or either party may produce, upon the hearing in the Supreme Court, such additional certified copies as they may deem proper, which shall become a part of said petition. Also that decree of dismissal *pro forma* in the District Court shall not prejudice said case in appeal.

F. SEMPLE, Attorney for Plaintiffs.

GEO. C. DIXON, Attorney for Defendant.

ELI McMILLAN;
vs.
LEE COUNTY.

And now comes on this case for hearing, and parties by their respective counsel having appeared, it is agreed that a decree *pro forma* be entered in favor of said defendants. Wherefore it is ordered, adjudged and decreed, that said demurrer be sustained, and said plaintiff's petition be dismissed, and that said defendants recover their costs against said plaintiff—all of which is done.

Notice of appeal on defendant is hereby waived for the next December term of Supreme Court.

GEO. C. DIXON, Attorney for Defendant.

Filed October 29th, 1856.

ERIE J. LEECH, Clerk D. C.
LEWIS KINSEY, Clerk Sup. Court.

STATE OF IOWA, }
SUPREME COURT. }

At a Supreme Court begun and holden at the State House, in Iowa City, on Friday the 12th day of December, A. D. 1856 Present, the Hon. GEORGE G. WRIGHT, Ch'f Justice,
" WM. G. WOODWARD, } Judges.
" L. D. STOCKTON, }

Be it remembered the following proceedings were had to-wit:

ELI McMILLAN and others, Appts. }
vs. } Appeal from Lee County
Lee County and the County Judge thereof, Appellees. }

This cause was this day submitted to the consideration of the court on oral argument of counsel.

And thereupon, to-wit: on the 15th day of January, 1857,

ELI McMILLAN and others, Appts. }
vs. } Appeal from Lee County.
Lee County and the County Judge thereof. }

This day this cause coming on for further hearing, and the court being now fully advised in the premises, find that there is error in the rendition of the judgment of the District Court, and the court having this day filed their written opinion herein, it is, therefore considered by the court that the judgment of the District Court be reversed and set aside, and that further proceedings be had in the District Court not inconsistent with the opinion of this court, and that a writ of *procedendo* issue accordingly, and that the appellant have and recover of the appellee his costs herein laid out and expended at this court.

And thereafter to-wit: on Monday, the 1st day of June, 1857, it being the 1st day of the June term of said Supreme Court. Present, Hon. GEO. G. WRIGHT, Chief Justice.
" WM. G. WOODWARD, } Judges.
" L. D. STOCKTON, }

The following proceedings were had, to-wit:

ELI McMILLAN, et. al., Appellants, }
vs. } Petition for Rehearing.
LEE COUNTY AND COUNTY JUDGE. }

This cause coming on for hearing, the petition was withdrawn and the cause demanded.

I, Lewis Kinsey, clerk of the Supreme Court of Iowa, do hereby certify that the foregoing pages contain a full, true and complete copy of the judgment entry, and record entries,

together with a full, true and complete copy of the petition and demurrer to the same, in the case of

ELI McMILLAN, and others, appellants *vs.* Lee county and the county Judge, appellees. } Appeal from Lee county.

As full, true and complete as the same now appears of record and on file in my office.

Witness my name and the seal of said court hereunto affixed, this done at Des Moines, this, 16th day of June, A. D., 1854.

{ Seal. }

LEWIS KINSEY, Clerk S. C.

We here refer to this cause as reported in 3d Iowa reports, page 311.

We next present the act of the General Assembly of Iowa, passed and taking effect, by publication in certain newspapers therein named, about February, 1857. It is found on page 44*i*, of Session laws of that year, and contains four sections. It will be found in library.

We next present certified copy of petition of same plaintiffs attacking this curative act, with all the pleadings and proceedings relating thereto, also the opinions of the court, which will be pointed out in the books. The same is as follows:

STATE OF IOWA, } LEE COUNTY. }

Pleas before the District Court of Iowa, at a special called term, begun and holden in the County of Lee, on the second Wednesday of May A. D. 1858, before the Hon. THOMAS W. CLAGETT, Judge of the First Judicial District of Iowa.

ELI McMILLAN, et al *vs.* SAMUEL BOYLES, Co. Judge & ROB'T McFARLAND, Co. Treas. } In Chancery.

Be it remembered that heretofore, to-wit: on the 26th day of February, A. D. 1858, a petition was filed in the office of the Clerk of the District Court, in and for the County of Lee, in the words and figures following, to-wit:

PETITION.

To the District Court of Lee County, Iowa, at Fort Madison:

Your petitioners Eli McMillan, Samuel Borland, George W. Browning, Alexander Linn, E. S. McCullough, Alexander McGreer, William Campbell, Eli Seely, William J. Robinson, Eli Heaton, Samuel Maloy and Absalom Anderson, respect-

fully represent, that on the 15th of September, 1856, they or ten of them, and two others who are now interested and acting with them, filed in the office of the Clerk of this Court, against the said County of Lee, and Hon. Samuel Boyles, Judge of said county, a petition setting forth and exhibiting certain proceedings of said county, by which she was about to take stock in three several Rail Road Companies therein named, charging that said proceedings were unconstitutional, illegal and void, and praying injunction to prevent further proceedings therein.

That at the October Term of this Court, 1856, defendants appeared by attorney, demurred to said bill of petitioners and by mutual agreement of counsel, on both sides, said demurrer was sustained and the bill dismissed at plaintiff's costs, without prejudice however to either party, in the contemplated hearing of said cause in the Supreme Court of this State. Said suit was accordingly dismissed.

The petition, demurrer, agreements and entire proceedings in this court are hereby referred to and prayed to be inspected and made and considered as part of this petition.

That said cause thus decided and disposed of, was appealed by plaintiffs, to the Supreme Court of the State and fully heard and decided at the December Term of said Court in 1856.

That said Court by Stockton, Judge, delivered the opinion of that court, herewith exhibited, correctly stating the facts and delivering judgment in favor of petitioners, and granting the relief prayed for. Said exhibit is marked A and prayed to be inspected and made a part of this petition.

That at the time of making said decision by said court, the General Assembly of the State of Iowa, was in session at the Capitol, and at the instance and request of parties interested, passed a law attempting to cure the defects in the proceedings complained of, and if valid and effectual, overcoming and destroying the effect and force of said decision of said Supreme Court. Said law was approved, or became a law without approval, on the 29th of January, A. D. 1857, and is found in session Laws of that year, page 447, is hereby referred to and asked to be considered and taken as a part of this petition.

That in said petition the entire facts necessary to a proper understanding of the case are fully and it is believed correctly stated, and are rehearsed with great accuracy in the opinion of the Supreme Court alluded to, and present petitioners ask that the facts stated in said opinion to be taken and consider-

ed as a part of this petition, to be corrected if errors should be found therein, by comparison with their former petition on file in this court, all of which facts are again averred and charged to be true, unconstitutional, illegal and void, as in said opinion and said former petition is stated and decided.

That in defiance of the decision of said Supreme Court, and under a supposed protection of the said act of the General Assembly, the County Judge, and the county by and through him, have gone forward and taken the stock in the several Rail Road Companies named, issued bonds to the said companies respectively to the amount of One Hundred and Fifty Thousand Dollars each, which bonds are either in the hands of said companies or hypothecated by them for funds in the Eastern Cities, or elsewhere.

That said County Judge has levied a tax upon the taxable property of Lee County of three mills to or on the dollar, making sums as stated by himself of Thirty-six Thousand Dollars, after allowing for delinquencies and contingencies in collecting, has issued his warrant to the Treasurer of said county for its collection, and said Treasurer and Collector is now collecting the same.

That said petitioners own taxable property in said Lee county, directly affected by said proceedings to an amount not less than One Hundred Thousand Dollars, on which they will soon be compelled to pay unless said proceedings and collection of said tax be enjoined and restrained by preliminary injunction from this Honorable Court.

That they charge and believe that the said above recited act of the General Assembly is in violation of the Constitution and utterly void.

They further state the persons acting with them and whose interests are identical with theirs, are so numerous that they cannot conveniently be brought before this court.

They further state that on the 13th May, 1857, a notice commencing suit to test the validity of said curative act, was put into the hands of the Sheriff of Lee County in good faith and with intent that it should be served, and that on the 15th of July following a petition was filed as notified in said notice, and petitioners hoped and believed that said suit would be mutually brought to issue and prepared to the Supreme Court at the October Term, but were disappointed by Sheriff returning not found as to one of the party defendants.

That said suit existed on the files of this court from the dates aforesaid, until about the 26th November, 1857, when finding no progress could be made in it, and that it would be

necessary to enjoin or pay the tax aforesaid, the same was withdrawn, and costs paid. The papers therein are hereby referred to and asked to be considered and taken as a part of this petition.

The petitioners pray that the said County Judge, Honorable Samuel Boyles, and the said County Treasurer and Collector, Robert McFarland, Esq., be made defendants to this petition, that they and each of them, and all persons acting by, through or under them or either of them, be, by preliminary injunction from this court, enjoined and restrained from proceeding farther in the collection of said Rail Road tax. That said act of the General Assembly and all proceedings had in Lee County, in pursuance thereof, be upon final hearing hereof, declared null and void to all intents and purposes, and said preliminary injunction be made perpetual and binding upon the parties forever.

And for such other and further relief as the nature and circumstances of their case demand and it is within the province of a court of equity to give.

FRANCIS SEMPLE,
Attorney for Plaintiff.

STATE OF IOWA, } Set.
VAN BUREN COUNTY. }

Francis Semple being sworn on oath says the several facts stated in the within petition are mostly within his own personal knowledge, and so far as personally known are true, and the remainder believed to be true.

FRANCIS SEMPLE.

Sworn and subscribed before me this day of December, A. D. 1857.

ELI McMILLAN & OTHERS
vs.
SAMUEL BOYLES,
County Judge of Lee Co., Iowa,
and
ROBERT McFARLAND,
Treasurer and Collector of said County.

In the matter of the application for a preliminary injunction to enjoin the above named defendants from collecting and disbursing a certain Rail Road tax, set forth in the petition of the above named plaintiffs, it is hereby agreed by the undersigned, Francis Semple, attorney for plaintiffs, and Samuel Boyles, County Judge, and Robert McFarland, Treasurer and

Collector, that said petition for injunction shall be submitted to George G. Wright, Chief Justice of the Supreme Court of Iowa, at his chamber in Des Moines, Iowa, on the 7th day of January, 1858, following. And it is further agreed and understood that said Chief Justice Wright is to request the other Judges of the Supreme Court to be present and hear the matter, so that i junction will not be granted unless it will be sustained when presented to the Supreme Court for final hearing.

F. SEMPLE, Attorney for Plaintiff.
SAMUEL BOYLES, County Judge.
R. McFARLAND, Treasurer & Collector.

STATE OF IOWA, } SS.
COUNTY OF LEE. }

I, Francis Semple, on my oath, duly administered, state that I am the identical person named as attorney for plaintiffs in the above and foregoing agreement. That said agreement was made in good faith by the parties who executed the same, and related to the petition of plaintiffs, attacking what is called the curative act, filed in the District Court of Lee County, Iowa, at Fort Madison, on the 26th day of February, 1858. That in pursuance of said agreement, Hon. Chief Justice Wright invited his brother judges to sit with him in hearing the application for preliminary injunction, which was done. The merits and demerits of the entire cause were fully discussed by counsel on the respective sides, as contemplated by the agreement, and the injunction granted after deliberation and consultation, as shown by certified copies hereto attached and made part hereof, the full bench concuring, as then understood by me.

FRANCIS SEMPLE.

Sworn to and subscribed by Francis Semple, before me this 18th November, 1864.
CHAS. DOERR, Clk. D. C.

STATE OF IOWA, } In District Court of said County at
LEE COUNTY. } Fort Madison.

ELI McMILLAN & OTHERS
vs.
SAMUEL BOYLES, County Judge, &
R. McFARLAND, Treas. & Collector.

Be it remembered that among the original papers in said case appear the following parts, to wit:

"STATE OF IOWA. }

"The above petition having heretofore been presented to "me for the allowance of an injunction, and being fully con- "sidered, it is ordered that the writ of injunction issue as there-

"in prayed for, the petitioners giving bond with sureties, to be "approved by the Clerk of the District Court of Lee county "in the sum of Ten Thousand Dollars.

" Supreme Court Room, Jan'y 21st, 1858.

GEO. G. WRIGHT,
Chief Justice, Iowa.

"STATE OF IOWA, } ss.
" COUNTY OF LEE. }

" *To the Sheriff of said County, Greeting:*

" Whereas, Eli McMillan, Samuel Borland, George W. "Browning, Alexander Linn, E. S. McCullough, Alexander Mc-"Greer, William Campbell, Eli Seely, William I. Robinson, "Eli Heaton, Samuel Maloy and Absalom Anderson have ob-"tained the allowance of a writ of injunction against Samuel "Boyles, County Judge of said county, and Robert McFar-"land, Treasurer and Collector of said county, and having "filed a bond in pursuance of law: Therefore, you are hereby "commanded, that you enjoin and restrain the said Samuel "Boyles and Robert McFarland, or either of them, or any oth-"er person by, through or under them, from collecting a cer-"tain tax assessed upon the people of said county of Lee for "the purpose of paying interest on certain Rail Road bonds is-"sued by said county, and of this writ make due service and "return.

{ SEAL. } Witness my hand, and the seal of the District Court of said Lee county, Iowa, at Fort Madison, this 27th day of Feb'y, A. D. 1858.

ERIE J. LEECH, Clerk D. C.
By R. H. LESUER, Deputy.

"STATE OF IOWA, } ss.
" LEE COUNTY. }

" Served the within writ on Samuel Boyles, County Judge of "said county by reading the same to him on the 27th day of "February, 1858; also served the within writ on Robert Mc-"Farland, Treasurer and Collector of said county, by reading "the same to him on the 15th day of March, 1858.

WM. H. LEECH,
Sheriff of Lee County, Iowa.
By H. M. GRIFFITH, Deputy.

" Sheriff's fees, service, $1 00
mileage, 20

$1 20

"STATE OF IOWA, } ss.
" LEE COUNTY. }

" I, Charles Doerr, Clerk of the District Court in and for "said county, hereby certify the foregoing to be true copies of "the order for an injunction, the writ of injunction and the "Sheriff's return upon the same, as appears from the original "now on file in my office.

{ SEAL. } Witness my hand and seal of office at Fort Madison, this 18th day of November, A. D. 1864.

CHARLES DOERR, Clk. D. C.

ELI McMILLAN, et al }
vs.
SAMUEL BOYLES, et al. }

And afterwards, to-wit: on the 12th day of May, A. D. 1858, it being the first day of the special May Term of said court, the said defendants filed the following demurrer to plaintiff's petition, to-wit:

ELI McMILLAN, et al
vs.
SAMUEL BOYLES,
County Judge Lee County, et al.
} District Court Lee County. In Chancery.

DEMURRER OF DEFENDANTS.

The defendants not confessing all or any of the matters in the said bill to be true in manner and form as the same are therein contained and set forth for answer of said bill of said plaintiffs, do demur in law and for cause of demurrer say and to this court show that in case the allegations in the said bill contained were true as therein set forth, which they do not admit, the said bill contains not any matter of equity whereon to sustain such said writ of injunction as is sought and prayed for in and by said bill, nor any matter of equity whereon this court can give to the complainants any relief as against these defendants. And for further cause of demurrer these defendants likewise say and to the court show according to the complainants' own showing in said bill, the proceedings of the County Judge of Lee County on making subscription to said Railroads named in said bill and in issuing bonds therein mentioned in said bill, and all acts, proceedings and records had, performed and made by said county of Lee or any officer thereof, concerning said subscription and the issuing of said bonds, as well as the levying and collecting of said tax in said bill mentioned, were confirmed, made valid and lawful by the

said act at the Legislature mentioned in said bill, and all defects illegalities and errors in the acts, proceedings and records of said county and the officers concerning and upon which said subscriptions were made and said bonds were issued are by said law of the Legislature mentioned in said bill cured so that the same could in no way affect or invalidate the said subscription and bonds or render the collection of the tax in said bill mentioned illegal.

And therefore, and for divers other causes of demurrer in said bill appearing of the complainant's own showing, defendants do demur to said bill and demand the judgment of this court whether they ought to be compelled to make any other or further answer, &c., and pray to be hence dismissed with costs, &c.

J. M. BECK, Solicitor for Defendants.

Filed May 12th, 1858. E. J. LEECH, C. D. C.
By D. H. LeSuer, Deputy.

The following paper was also filed on the 12th day of May, A. D. 1858, to-wit:

ELI McMILLAN, et. al., vs. SAMUEL BOYLES, County Judge, and ROB'T McFARLAND, Co. Treasurer. } In District Court Lee County. In Chancery.

In the foregoing cause it is agreed that it be submitted for trial upon the demurrer of defendants to the bill of plaintiffs, and that the said demurrer be sustained by the court, and a decree accordingly entered *pro ~~funclo~~* dismissing the bill, from said decree. Plaintiffs may appeal to the Supreme Court where the said cause upon said demurrer shall be heard *de novo* without prejudice on account of this agreement or anything herein contained.

April 18th, 1858. FRANCIS SEMPLE,
Attorney for Plaintiffs.
J. M. BECK, Attorney for Defendants.

Filed May 12th, 1858. E. J. LEECH, C. D. C.
By D. H. LeSuer, Deputy.

Filed June 18th, 1858. L. KINSEY, Clerk S. C.

I, Lewis Kinsey, Clerk of the Supreme Court of Iowa, do hereby certify that the foregoing pages contain a full, true and complete copy of the record entry petition, demurrer and agreement of counsel to submit—in the case to which they re-

fer, as full, true and complete as the same now appear of record and on file in my office.

SEAL. Witness my name and the seal of said court hereunto affixed. Done at Des Moines this 16th day of June, A. D. 1864.

LEWIS KINSEY, Clerk S. C.

We here refer to 6th Iowa Reports, pages 304 and 391.

This cause was, after decision by the Supreme Court of Iowa, taken to this court on supposition that petitioners could procure review of the fundamental contract, between the plaintiffs as citizens and subjects of the government of the State of Iowa, and the sovereignty thereof. In this they were mistaken. The court held that no jurisdiction could be exercised in the premises. The records of this case in this court, we ask, may be inspected should the same become necessary.

We next present certified copy of bill of review filed by same plaintiffs, in the District Court of Lee County, the action of the District and Supreme Courts thereon, with final decree, granting all the relief originally prayed for. Petition, pleadings and decree are as follows to-wit:

ELI McMILLAN et al.
vs.
SAMUEL BOYLES, Esq., and T. H. ALLYN, Esq., County Judge & Treasurer & Collector of Lee County, Iowa. } In Chancery.

PETITION.

Bill of Review in District Court of Lee County at Fort Madison.

Your petitioners, Eli McMillan, George W. Browning, Alexander Linn, E. S. McCullough, Alexander McGreer, William Campbell, Eli Seeley and Absalom Anderson, respectfully show to this court, that they in their proper persons, together with one Samuel Borland, who has since deceased, on the 26th day of February, 1858, filed in this court against the above named defendants their petition which is hereby referred to and made part of this bill of review.

That in said petition they refer to and make an exhibit of a certain petition filed by them and certain other parties acting with them in the same court, on 15th October, 1856, which petition relates to the taking of stock by the county of Lee in several Rail Road Companies therein named and specifically set forth.

That they also exhibit as part of their said last mentioned

petition, the final adjudication of said cause in the Supreme Court of the State of Iowa, which decision is now reported, and is found in 3d Iowa Reports at page 311, and for greater convenience is there referred to and made a part of this petition.

That their said cause combining, setting forth and asking to have passed upon, the whole and entire merits and demerits of the question of power and right under the constitution and laws of the State of Iowa, to take and subscribe stock to Rail Road Companies by counties, and thus compel a minority to yield to a majority, and submit to be taxed against their own will for such purposes, was carried to the Supreme Court of the State, was then and there passed upon and decided, and is reported in 6th Iowa Reports at pages 304 and 391, which for greater convenience is hereby referred to and made a part of this petition. That up to this time your petitioners have obtained no relief from grievances complained of, nor in their judgment and belief have they had a hearing by the courts of this State upon the questions made, the action of the courts referred to being palpably erroneous upon its face to such extent as to entitle plaintiffs to a review thereof.

They state that they stand in the same relative positions that they occupied at the commencement of this controversy, or nearly so, having in the aggregate as much if not more property to be injuriously affected by the taxation sought to be avoided, and are associated with the same number of persons, and many more who organized to test the constitutional validity of the course pursued.

They also state that they carried their said cause to the Supreme Court of the United States upon writ of error, from that court to the Supreme Court of the State of Iowa, in the hope and belief that they could obtain relief in that court, on the ground that the contract existing between the sovereign State of Iowa, on the one side, and your petitioners, her subjects, on the other, as set forth in our constitution, had been impaired within the language of the constitution of the United States upon that subject, but were disappointed, the said court at its term just closed dismissing the same for want of jurisdiction, on the ground that the contract impaired was political only, and not within the clause of the constitution of the United States on the subject of impairing the obligation of contracts which was held to apply to pecuniary contracts only.

They further state that taxes have been assessed against petitioners and their associates in Lee County, to an amount it is believed of over one hundred thousand dollars, payment

whereof is about to be coerced by the defendants above named and set forth.

That in their first petition they make the following charge to-wit: "That from their own knowledge and advice of counsel on whom they rely, they believe that the County Judge of Lee County, has not, and cannot have conferred upon him or his county by Legislative enactments under the constitution of the State of Iowa the power to take stock in a corporation as is being attempted to be done in this case."

Also the following: "That as they are advised and believe, the entire proceedings as set forth and exhibited in the file of papers marked A are without authority or foundation in constitutional or statute law, and therefore void from the beginning and *in toto;* and that if suffered to be carried out to completion, as seems to be intended, they severally, as well ss a great number of their fellow citizens will be seriously injured and damaged thereby."

That in these clauses of their first petition they sought to raise the question of the constitutionality of the entire proceedings and hoped to have the constitution of our State, adopted in convention the 18th of May, 1846, and in force in our State at the time of the proceedings complained of, fully interpreted by the Supreme Court of the State, believing that tested by ordinary rules of interpretation of such instruments, it not only did not confer the power upon the counties, but absolutely forbade the same.

That they believe and charge that they did in a proper manner, and to the full satisfaction of the Supreme Court then in existence in the State of Iowa, raise the said constitutional question and they refer to 3d Iowa, page 311, last paragraph of said opinion on page 323, which is made a part hereof and is as follows: "As the decree of the District Court denying the relief sought, and dismissing complainants petition must be reversed for the reasons above set forth, we do not deem it expedient or necessary at the present time to enter into any examination of the other questions presented and discussed by counsel. Their inherent importance, and the great interest felt in their decision by a large portion of the people of the State admonish us of the patient study and deliberation with which their investigation must be attended; and we have deemed it proper to avoid rendering any judgment upon them until they shall arise in some case where the decision is rendered necessary in order to its final disposition. Another reason which has had its weight with us, is that it is understood that the questions raised have been passed upon and decided by the for-

mer members of this court in the case of the county of Dubuque *vs.* the Dubuque and Pacific Rail Road Company. But as no written opinion has been filed in this Court, and as we are not informed as to the exact questions decided as well as the reasons upon which the decision was based, we have concluded to give no opinion upon them, and as their decision is not necessary to the disposal of this cause, we have the more readily adopted this conclusion. The order and decree of &c., &c."

That in their petition filed 26th February, 1858, they refer to their petition above set forth in the following language to-wit: "The petition, demurrer, agreement, and entire proceedings in this cause are hereby referred to and prayed to be inspected and made and considered as part of this petition."

That in said petition they state that their said cause, thus referred to and spoken of, was appealed to the Supreme Court of the State of Iowa, that the same was decided in that court in their favor, give and make the opinion of Stockton, Judge, as an exhibit in the case, and again refer and allude to their former petition and action thereon in the following language to-wit: "That in said petition the entire facts necessary to a proper understanding of the case are fully, and it is believed correctly stated, and are rehearsed with great accuracy in the opinion of the Supreme Court alluded to, and present petitioners ask that the facts stated in said opinion be taken and considered as a part of this petition, to be corrected if errors should be found therein, by comparison with their former petition on file in this court, all of which facts are again averred and charged to be true, unconstitutional, illegal and void as in said opinion and said former petition stated and decided."

They here reiterate and charge that the gravamen of their complaint from the beginning of the litigation to its termination is that the proceedings complained of are in direct violation, of the constitution of the State of Iowa, in force as the fundamental law, at the time of taking the stock aforesaid, and at the time of taking the preparatory steps on the part of the county to take the same. They further beg leave to state that they commenced proceedings to test the validity of the proceedings of Lee County to take the stock and issue the bonds aforesaid, before the record of the same was completed in the county court, and until the dismissal of their case by the Supreme Court of the United States, which took place on the 1st of May, 1860, there has always been proceedings pending against the same; the first petition contains the following agreement, from which we extract: "In this case it is agreed

and intended to present this case upon above demurrer and joinder therein, so as fully and fairly to raise and have determined the questions raised by the bill, to-wit: the constitutional and legal powers of Lee County to vote for such railroad subscriptions so as to render them valid and binding upon the county, and to issue bonds in payment thereof as set forth in said petition disregarding technicalities for the purpose of raising the questions and having them decided. And further, that the record exhibited in the bill shall be considered as full and complete, or either party may produce upon the hearing in the Supreme Court such additional certified copies as they may deem proper."

They further show that the Board of Canvassers did their work and the same was put on the minute book of the county on the 17th September, 1856, that four weeks public notice had to be thereafter given before it could have the force of law, and their petition was filed on the 15th October, less than four weeks from the counting of the votes. Your petitioners are surprised to hear two judges of the Supreme Court say in the opinion and dissenting opinion in, "Young Stokes, et al, vs. Scott County," that "in the case before us the question is made for the first time to the present members of the court *before* the bonds have been issued and before the rights of third parties have intervened."

They beg leave to refer to the following language in the opinion of the court in the case of Clapp vs. Cedar County, 5th Iowa, page 15. "If we were called upon for the first time to decide this question for this State, we should entertain heavy doubts of the existence of the power on any grounds; and if the attempt were made to plead it, S. S., 114 of the Code, under the power to aid in constructing roads, we should think very lightly of the argument."

They state that notwithstanding they in their first petition averred and charged that the proceedings complained of were in violation of the constitution, notwithstanding contract is entered into and filed in that cause, by which the same rested mainly upon this constitutional question, notwithstanding they in their second petition re-aver and re-charge the same thing both generally and in detail, notwithstanding the court by Stockton, Judge, 3d Iowa, 311, admits the pertinency and great magnitude of the questions involved, and gives the reasons of the court for not passing upon them, notwithstanding the court itself in Clapp against Cedar County, 5th Iowa, page 15, admits that on first principles they entertain heavy doubts of the power under the constitution, and notwithstanding they,

your petitioners, brought their bill of complaint in proper and admitted form before the proper tribunal before the proceedings complained of were complete, before they could have the effect of a law of the General Assembly, and consequently before any bonds could issue, and before any intervening third parties could acquire any rights; yet so it is that a decree is entered and confirmed in the courts of this State denying them any relief in the premises, subjecting them to an odious and unjust taxation, to make internal improvements in which they are not interested and this too without their being heard on the case they make; and with the impression on the mind of the Supreme Court of the State that the rights of innocent bond holders who had purchased for full consideration and without notice, were an impassable bar to such action, when no such fact existed, and when in truth the plaintiffs herein had kept the commercial world notified of their determination not to pay said bonds beginning before their issue.

Your petitioners, therefore, humbly pray that the action of the courts of this State be revised, re-examined and investigated, the constitutional questions therein raised be adjudicated singly and separately, the power of the Legislature under the constitution of 1846, to authorize such proceedings as are complained of in this case be determined, the whole proceedings be declared null and void to all intents and purposes, and the defendants herein and their successors in office, be restrained and enjoined by proper decree of this court, from proceeding further in the collection of the taxes aforesaid or in the payment of money upon the bonds aforesaid, or in any manner attempting to carry out and enforce the participation of the county of Lee in the Rail Roads aforesaid. Also for such other and further relief both general and special as in equity they may be entitled to. FRANCIS SEMPLE,

Att'y for Pl'tiffs.

ENDORSED.—Filed July 28th, 1860.

E. J. LEECH, Clerk D. C.
By D. H. LESUER, Deputy.

And be it known that with said petition there was also filed a demurrer of defendants in words and figures following, to-wit:

DEMURRER.

ELI McMILLAN, vs. SAMUEL BOYLES, Co. Judge, & T. H. ALLEN, Treasurer. } District Court of Lee Co., Fort Madison. In Chancery.

Now comes defendants and demur to the petition in this

case filed, because the same shows nothing upon which relief can be based.

2nd. And because there is no equity in the bill of petitioners.

3rd. And because the bill avers no facts upon which can be based a decree.

SAMUEL BOYLES, Co. Judge,
T. H. ALLEN, Treasurer. } Defendants.

ENDORSED.—Filed March 11th, 1861.

E. J. LEECH, Clerk D. C.
By CHARLES DOERR, Deputy.

Filed June 13th, 1862. L. KINSEY, Clerk S. C.

I, Lewis Kinsey, Clerk of the Supreme Court of the State of Iowa, do hereby certify that the foregoing pages contain a full, true and complete copy of the record entries of the motion to enter decree *nunc pro tunc* and the decree *nunc pro tunc* ordered by the court together with the petition and demurrer to the same, in the cause to which they refer, as full, true and complete as the same now remains of record and on file in my office.

{ SEAL. } Witness my name and the seal of said Court hereunto affixed. Done at Des Moines, Iowa, this 16th day of June, A. D. 1864.

LEWIS KINSEY,
Clerk Supreme Court.

STATE OF IOWA,
SUPREME COURT.

At a Supreme Court begun and holden at the Capitol, in the city of Des Moines, on Friday the 5th day of June, A. D. 1863. Present, Hon. CALEB BALDWIN, Chief Justice.
" GEORGE G. WRIGHT, Judge.

The following, among other proceedings, were had, to-wit:

ELI McMILLAN, Appt.
vs
SAM'L BOYLES, Appellee. } Motion to enter decree *nunc pro tunc* and correct record.

And now comes the appellant and moves the court to correct the judgment of the court heretofore made in this case, and to enter decree herein *nunc pro tunc* for reasons on file, and the court having heard the same, and being now sufficiently advised in the premises sustain said motion, and order that the following decree *nunc pro tunc* be entered, to-wit:

SUPREME COURT, IOWA,
June Term, 1863,
Friday, June 5th, 1863.

ELI McMILLAN, et. al., Appellants,
vs.
SAMUEL BOYLES, et. al. } Appeal from Lee Co.

And now this cause coming on to be heard on motion of plaintiff's counsel for correction of the record entry therein, and for decree *nunc pro tunc* in accordance with the opinion of the court. And the court having inspected the record and opinion on file and appellees having failed to respond to said motion, it is hereby ordered adjudged and decreed, that the erroneous record entry made by the clerk by mistake at the time of the oral announcement of judgment in the cause, be cancelled and held as void; and that instead thereof, decree be now entered in accordance with prayer of petition, and the decision of the court as expressed in the opinion on file to have the same force and effect in law and equity as if properly signed and entered at the time of decision which decree by agreement of parties is as follows, to-wit:

And now this cause having been successively submitted to the court by counsel on the respective sides thereof as per written agreement on file and by oral agreements on the part of plaintiffs, and the court having fully inspected the cases as made by plaintiffs and exhibits, and references therein, find the same to be true in fact and that in law said plaintiffs are entitled to the relief for which they pray, therefore ordered and adjudged that the defendants' demurrer be and the same is hereby overruled. And the said defendants having no other matter of defense to answer to plaintiff's petition, and desire being expressed in writing that a final decree be entered in and by this court, the court on full examination of the Constitution and laws of the State of Iowa bearing upon the subject, consider and adjudge that the bonds mentioned in plaintiff's petition, with the coupons attached thereto, and all things accompanying them, together with the vote of the county of Lee by which it is claimed they were authorized, and the subscription to said Rail Road Companies, of the stocks mentioned in petition and all other acts and things done in and about the premises by the County Judge of Lee County and his predecessors in office, and the levy of the taxes and attempt to collect the same by the Treasurer of Lee County as stated in the petition, are all unauthorized by law and utterly void, and not only without authority of Constitution and Statute but in direct contravention and violation thereof and of common principles of Justice and right. And the court further finds that plaintiffs as claimed in their petition instituted their suit in chancery in the proper District Court of Lee County as claim-

ed before the completion of the election record and before the expiration of the publication of the notice required by law to be given in case of votes by counties on local subjects and in full time to apprise the public of their intent to contest the equity of said bonds. And the court also further find that plaintiffs in their said suit raised fully and properly the constitutional and legal questions now settled and were fully entitled to have them passed upon and decided by this court, but the court in view of the great magnitude of the questions and interests involved, decided their case as reported in 3d Iowa, upon the legal questions alone in their favor, and left the constitutional questions for further consideration and adjudication, and they find that the said decision was, by act of the Legislature of Iowa, by legal enactment rendered imoperative and that plaintiffs thereby lost all benefit of their litigation against said bonds, which were unconstitutional but which were supposed by the Legislature to be valid under the constitution because of the failure of this court to decide the constitutional questions raised, and therefore acts done by the officers of Lee County in contravention of Statute Law were cured by them. And the court thus finding, and thus ruling hereby adjudge order and decree, that the proceedings complained of in plaintiff's petition by which the vote of Lee County was taken authorizing subscription to the stock of railroad companies, the subscription of stock thereto, the issue of bonds of the county with coupons attached and all other acts and things done in furtherance of said project, together with the act or acts of the General Assembly of the State of Iowa curing or attempting to cure the same, be held and taken to be null and void to all intents and purposes whatsoever.

And it is further ordered, adjudged and decreed by the court that defendants in this case and their successors in office and all officers acting by, through or under them, or in any manner by them or any of their authority to be perpetually and forever enjoined and prevented from levying or collecting any tax or taxes within the county of Lee or upon or from her citizens, for the purpose of paying interest coupons mentioned in plaintiff's petition, or any part thereof. And it is further ordered adjudged and decreed that plaintiff have and recover of and from the defendants the costs of this suit taxed at $ and that execution issue therefor.

We are compelled to call attention to the vacillations of our Supreme Court on this subject. It is a necessary part of the history of the case.

During all the litigation by us, of the constitutional questions

involved, our points made on that instrument have never been passed upon and reported by the Supreme Court of Iowa, as was its bounden duty to do, and as we had right to and did demand.

As shown by election record, election was held on Wednesday, 10th day of September, 1856.

On the 15th day of October, 1856, twenty-five days after, before the vote became a law, or had force, and before issue of any bonds, we filed our first petition, raising the questions of constitutional power, as admitted by that court. That petition contains the following:

"That from their own knowledge and advice of counsel, on whom they rely, they believe that the County Judge of Lee County has not and cannot have conferred upon him or his county, by legislative enactments under the constitution of the State of Iowa, the power to take stock in a corporation as is being attempted to be done in this case."

There is in it also the following:

"That, as they are advised and believe, the entire proceedings, as set forth and exhibited in the file of papers marked, "A" are without foundation in constitutional or statute law, and, therefore, void from the beginning and *in toto;* and that, if suffered to be carried out to completion—as seems to be intended—they, severally, as well as a great number of their fellow-citizens, will be seriously injured and damaged thereby."

In this cause a demurrer was interposed by our learned and distinguished friend in opposition (George C. Dixon, Esq.,) was joined in by us, and the following agreement was made and filed in the cause.

"ELI McMILLAN,
vs.
LEE COUNTY.

In this case it is agreed and intended to present this cause upon above demurrer and joinder therein, so as fully and fairly to raise and have determined the questions raised by the bill, to-wit: The constitutional and legal power of the County of Lee to vote for such Railroad subscriptions so as to render them valid and binding on the county, and to issue bonds in payment thereof, as set forth in said petition, disregarding technicalities, for the purpose of raising the questions and having them decided; and, further, that the record exhibited in the bill shall be considered as full and complete, or either party may produce, on the hearing in the Supreme Court, such additional certified copies as they may deem proper, which shall become a part of said petition; also that decree of dis-

missal *pro forma*, in the District Court shall prejudice said case of appeal.

F. SEMPLE,
Attorney for Plaintiffs.
GEORGE C. DIXON,
Attorney for Defendant.

The law of the State of Iowa as it now stands, and as it stood substantially at the time, is as follows:

"An assignment of error need follow no stated form but must, in a way as specific as the case will allow, point out the very error objected to. Among several points in a demurrer, or in a motion, or instructions, or ruling in an exception, it must designate which is relied on as an error, and the court will only regard errors which are assigned with the required exactness; *but the Court must decide on each error assigned.*' Sec. 3,546, of present revised code of Iowa. On same sub-' ject is Sec. 3,550. "No cause is decided until the opinion in writing is filed with the clerk."

In this state of the case, and under these facts, the response we get by the court is as follows: "As the decree of the District Court denying the relief sought, and dismissing complainant's petition, must be reversed for the reasons above set forth, we do not deem it expedient or necessary to enter into any examination of the other questions presented and discussed by counsel. Their inherent importance, and the great interest felt in their decision by a large portion of the people of the State, admonish us of the patience and deliberation with which their investigation must be attended; and we have deemed it proper to avoid rendering any judgment upon them until they shall arise in some case where the decision is rendered necessary to its final disposition.

In the petition filed 26th February, 1858, petitioners refer to and make this petition, now extracted from a part thereof. They do so in this language: "The petition, demurrer, agreement, and entire proceedings in this cause, are hereby referred to and prayed to be inspected and made and considered as part of this petition."

By authority of decisions of this court, as will not be denied, the proceedings in the same court, and on the same subject matter, could thus be referred to and made part of such petition.

This latter petition asked for a preliminary injunction based on the constitutional questions raised in said petition.

Agreement heretofore inserted in connection with petition was made in pursuance thereof. The attorneys on the respective sides argued the same elaborately before the full

bench, and the order for the writ was made in the Supreme Court room on January 21st, 1858. Certified copy is given; also of the writ and return.

Unfortunately, perhaps, for us, this action of the court was not reported. It could have been nothing else. It was a unanimous decision upon the questions raised upon our constitution, and adverse to the issue of the bonds.

The paper in suit bears date first day of January, 1857; and we claim and believe that the bonds were not delivered until after that writ was served.

Without any statutory provisions on the subject, we claim, without argument, that it was the duty of the Iowa court to have decided all the pertinent questions we raised that properly belonged to the case.

It is refreshing, indeed, to us, at least, to turn to the decisions of this court, and view the history of its uniform action on this point. Every legitimate question raised in a case by counsel is either conceded or its unsoundness demonstrated, and this, too, whether the point be made in pleading or argument.

We cannot quote much authority on this point, nor is it necessary to do so. In the celebrated case of Dred Scott, *vs*, Sanford, Mr. Justice Wayne uses this language in relation to the opinion of the Chief Justice, which had just been delivered:

"The opinion of the court meets fully and decides every point which was made in the argument of the case by the counsel on either side of it. Nothing belonging to the case has been left undecided, nor has any point been discussed and decided which was not called for by the record, or which was not necessary for the judicial disposition of it, in the way that it has been done, by more than a majority of the court."

Whatever of dissent appears in this celebrated case on other points, we think every member of this court admits the duty of the court to be, to discuss all points properly raised, and settle them in some way, and that this had been done by the court in that cause.

Strange as it may appear, the Supreme Court of Iowa never, in our case, passed upon the important questions we raised, except upon application for preliminary injunction, which was not reported; although, in the case of McMillan, et. al., *vs.* Boyles, et. al., reported in 14th, Iowa, at page 107, they concede every point we ever assumed; but for discussion and views of the court, they refer us to the Wapello County case, found in 13th, Iowa, page 388. Although the same constitutional

argument was always pressed upon them, that is herein submitted to this court, it can scarcely be considered as touched in the case. A very clear, and, we think, very valuable, discussion is there had upon the unnatural and incompatible relation created between the State Government and Corporations for pecuniary profit; and the entire inconsistency of such relation, with the personal enjoyment and control of property by the citizens, is clearly pointed out; but the foundation of our argument, found in the bill of rights, which is part of the constitution, is not quoted.

Our case was filed in the Supreme Court of Iowa, on 13th day of June, 1862, and the opinion in the case of Wappelo county, was delivered on the 16th. Both cases were in court at the same time. That was decided very soon after it originated; ours had been on hand since October, 1856—a period of about eight years. We had been guilty of no laches or neglect either in raising the questions or pressing them. We do not complain, but think we know how to sympathise with a court, charged by implication, with having immolated truth, justice and the law, on one hand, and complained of by a portion of its own constituency on the other, in consequence of shrinking from the discharge of a disagreeable duty which demanded its attention and action.

Had the questions been decided, as we think they should have been, in the case in 3d Iowa reports, page 311, this controversy, and a vast amount more, would have been avoided, the money invested in corporation bonds of Iowa would have been saved to its owners, and the deeply to be deprecated conflict of Federal and State jurisdiction never have been heard of.

We think professional duty will not allow us to pass over the manner of deciding this great question against us. It was done, not in our case, but with full knowledge of its existence, and of the clear and forcible manner, to use the Court's own language already quoted, in which these questions were presented to it in argument in the case in 3d Iowa; but in the case of Clapp vs. Cedar county 5th Iowa p 15. The Court says in that case, at its very threshold: "If we were called upon for the first time to decide this question for this State, we should entertain heavy doubts of the existence of the power on any grounds: and if the attempt were made to place it on section 114 of the code, under the power to aid in constructing roads, we should think very lightly of the argument."

We respectfully ask the Court to read the entire opinion and dissenting opinion in the case, together with the argument of defendant's attorneys.

The question of Constitutionality is not made by them in such manner as to call for an adjudication of the questions arising thereon.

In their argument we find the following allusion to the constitutional questions: "The next question that meets us is as to the legal power of the County Judge to execute and issue the bond and warrants declared on. We do not purpose to argue at length the Constitutionality of county subscriptions to railroad corporations. This question has, we understand, been fully argued at this term of the Court, and will doubtlessly receive, as it certainly merits, its most weighty and careful consideration. The question as to the constitutionality of municipal subscriptions to railroad corporations, has generally arisen, as in the case of Sharpless vs. Mayor of Philadelphia; 2 Livingston's Law Magazine, 124, where the Legislature has passed an act expressly authorizing such subscriptions; thus bringing up plumply and plainly and only the question whether the Legislature has, or can have, the constitutional power to pass such an act. And the question thus arising has been decided both ways, and is still *questio vexata*.

"No such question is presented in this case, because the General Assembly of this State has never passed an act allowing such subscriptions, unless it may be found in sec. 114 of the Code. It has never been contended that a city or county, without the express sanction and authority of the Legislature, could legally subscribe to the stock of a private corporation. *A long way this side of the question of constitutionality, therefore, is the question, whether there is any authority given by the Code allowing such subscriptions as we are here speaking of.*"

The aim and purpose of the defendant's counsel here, is to show to the Court that no constitutional question exists, and that the case must turn upon the question of a Legislative grant of power. It is true they speak of an argument by other counsel, in another case, and seem to expect they will be passed on by the Court at that term but not in their case.

The question is not made in the pleadings, nor in argument as an attempted discussion, and anything that is said is upon general features and principles of the question, and in no wise upon our peculiar Constitution.

The Court, although the peculiarity of our Constitution had been fully argued before it in the case in 3d Iowa, the questions fully raised and pressed for decision therein and evaded, as shown, all of which had occurred at December term, 1856, and this opinion was delivered, as will be seen by reference to the volume containing it, in June term, 1857, about six months

thereafter, when all must have been fresh in the mind of the Court, ~~is not~~ settled.

As will be seen by the opinion itself, and by a note of the reporter at the end of the case, no opinion in the Dubuque city case, reported in 4th Green, was then accessible to the Court, no manuscript opinion being on file, and the 4th volume of Green not being published.

In this state of affairs, a majority of the Court, upon the seeming ground that they, as a Court, are responsible for the character of the State, instead of being in possession of the judicial branch of the Government only, and charged only with the just interpretation and administration of its laws, proclaim to the world that they will not repudiate, but will stand by the first and only decision ever made, not because it is or ever was law, which they have great and very heavy doubts about, but because they wish to preserve intact the character of their State.

They seek, as we think must be apparent to the cursory reader, to fix these bonds as a burthen on the people of the State, but put the responsibility of an admitted wrong and outrage upon their predecessors. They do this, too, in a case in which the question does not arise, in which it is declined in argument by counsel, and where it is not demanded, whilst they, as shown by quotation from themselves in the case in 3d Iowa, shrink from and evade the questions when fully and fairly raised and discussed, within the prior six months. They, too, decline discussion, saying what is said on general principles as applied to other constitutions, and are utterly silent upon the peculiar features of our own fundamental law. The casual reader would not perceive from the opinion that any difference was claimed to exist between the Constitution of Iowa and that of Pennsylvania, under which arose the case of Sharpless vs. the Mayor of Philadelphia.

In case of Stokes et al vs. Scott county, 10th Dowd 166, the same Judges who determined as "Autocrats of all the Russias" to save the character of the State, as if they owned it and were accountable to the world for its character, concede that no power to issue such bonds for internal improvement purposes ever existed. Each Judge delivers his own opinion.

Stockton says: "*I concur in opinion with the Chief Justice, that there is no power in the counties of this State, under sections* 114 *and* 116 *to subscribe to the capital stock of R. R. Companies.*" &c., &c. He then says that the question for the first time arises before issue of the bonds. We have shown by quotation of his own language, that the identical questions were before him, and evaded by the Court in the first case. *Terri-*

ble mistake! He always held that no such power existed, but had decided bonds to be legal and binding *on other grounds.*

Woodward says: "It would not be possible for judicial opinion to indicate more clearly what would be the view of the Court, if it were untrammelled by previous decisions and Legislative action, and were free to express its own opinion. So far as regards the existence of the power, true, under the law as it now is, I agree with the Chief Justice, and have so agreed since the first case was presented.

We hope to be pardoned for saying, that in our opinion, the method adopted of disposing of these questions, was not such as would have been adopted by the Supreme Court of Tennessee, when President Jackson was at its head.

Having the facts of this case, so far as to make it easily comprehended, we proceed to lay down several legal propositions, and to support them by authority, and

First. We call attention to the doctrine of *lis pendens* and quote or refer to Bouvier's Law Dictionary, under that title, and authorities there cited.

Litigation was commenced before completion of the record, was varied and adapted to the varied course of action of the parties interested, and kept up with all reasonable diligence until final result in our favor.

This surely imparted notice to all men of the claim of protection, under our Constitution, from such taxation, by the people of Lee county to the number of 1,100.

Another word under this head of notice. Decision was made in our first case in December, 1856. Legislature was then sitting, and passed a curative act. It was not approved by the Governor, but as certified by the then Secretary of State, became a law on the 29th of January, 1857. By its terms it was to take effect by publication in certain newspapers, the last of which, it will be seen, was on the 3d of March. It could have no effect before; yet on the *1st of January*, 1857, the claim sued on bears date.

All agree that no power then existed. Was not purchaser bound to notice pendency of case of McMillan vs. county authorities, decided against issue of these very bonds, and remanded for farther action? Could he safely purchase bonds under the curative act before the same could have force?

The bonds of Lee county were issued and sold in opposition to, and defiance of, the decision of the Supreme Court adversely to their validity, and its order upon the lower Court to further proceed in accordance with opinion filed, and before curative act had effect.

Second. We claim that the decree of the Supreme Court of Iowa, restraining the authorities of Lee county from collecting taxes to pay these bonds, injunction served as it was upon her, is absolute verity, and must stand as the law of the case.

3d We say, and shall attempt to demonstrate, that our Constitution to which we have referred, is peculiar in its form, was made with an express view to the prevention of the legislative department of the government of Iowa from contracting indebtedness for internal improvements, and of course from issuing any such paper as that declared upon.

We call attention especially to the first article of the bill of rights. It is as follows: "All men are, by na ure, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness."

Also to a portion of the 2d article. It is as follows: "Government is institated for the protection, security and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it."

Also to section 6 of the bill of rights. It is in these words: "All laws of a general nature shall have a uniform operation."

Also to section 26, article 3d, which is in these words: "Every law shall embrace but one object, which shall be expressed in its title."

Also to article 7, which is in these words: "The General Assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in the case of war, to repel invasion, or suppress insurrection, unles the same shall be authorized by some law for some single object or work to be distinctly specified therein; which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrepealable until the principal and interest shall be paid and discharged, but no such law shall take effect until at a general election it shall have been submitted to the people and have a majority of all the votes cast for and against it at such election; and all money raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each judicial district, if one is pub-

lished therein, throughout the State, for three months preceding the election at which it is submitted to the people."

Also to article 8, which is as follows: 1. "No corporate body shall hereafter be created, renewed, or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promisory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit by law, any person or persons, association, company or corporation, from exercising privileges of banking, or creating paper to circulate as money.

2. "Corporations shall not be created in this State by special laws, except for political or municipal purposes; but the General Assembly shall provide for the organization of all other corporations, except corporations with banking privileges, the creation of which is prohibited. The stockholders shall be subject to such liabilities and restrictions as shall be provided by law. The State shall not directly or indirectly become a stockholder in any corporation."

And also to section 24 of the bill of rights, which is as follows: "This enumeration of rights shall not be construed to impair or deny others retained by the people."

These quotations are taken from the constitution of the State of Iowa, made in convention in 1846, it being the constitution in force at the time of election embraced in the record.

Here we call attention to the fact that the territory of Iowa was organized by act of Congress approved 12th June, 1838, and this constitution bears date 18th May, 1846.

Are the restrictions upon legislative power and the extension of inalienable rights in this constitution peculiar? and if yea, what caused these peculiarities?

We have not at hand any table of State indebtedness, but from memory state, to be corrected by the recollection of the Judges of this court if we are incorrect, that during the intervening eight years of the territorial existance of Iowa, Pennsylvania and other eastern States, were indebted and taxed, and that too for internal improvemrnts, some of the projects being wild in their conception, and extravagant in cost, to an extent that was burdensome to the very verge of endurance. At no period of the eight years was Pennsylvania's debt less than forty millions. New York exceeded this by several millions, Ohio was something less, and Virginia perhaps equal to Ohio.

In all these and other eastern States, banking had been the source of evil and distress in the country; and so had also

been the creation of corporations for money making, among which as very prominent may be mentioned the chartering the old and defunct bank of the United States by Pa.

Very eminent jurists gave legal opinions to the effect, that creating debts and borrowing money and hypothecating for redemption and payment, the property of future generations was in clear and manifest conflict with our plan and forms of government, that all such debts were void and that States were bound in duty to themselves and to posterity to repudiate, and several States, as Missouri and Mississippi did repudiate.

Are we wild in asserting, that very many persons in those States, sold out and fled from these evils to the virgin prairies west of the great father of waters, and there in due time, essayed the making of a constitution that would protect them and their property against a repetition of the abuses and oppressions from which they had fled? Not a single framer of the constitution was born within her territory. All were from eastern states, where repudiation, produced by burthensome taxation for wild and speculative, together with valuable internal improvements, had been with great difficulty suppressed. The peculiar character of the restrictions inserted, show that they had a strong and clear purpose in view, to-wit, the absolute taking up by the roots, the evils in representative government from which they had escaped, and the preservation in the hands of the absolute sovereignty, the people of the State, a sole control over the dangerous subject of internal improvements.

In America, governments are created by the people, for the benefit of the people, and are evidenced and defined by written constitutions.

In this country as well as in Europe, governments are held to be contracts, between the sovereign on the one hand, and the subject on the other. Subject promises and pledges due allegiance, payment of proportional share of expenses to maintain, and discharge all other duties, legally due to his government; and in return therefor and in consideration thereof the government gives its faith that it will protect him in all his rights. And in Iowa, these are defined and pointed out by her written constitution.

Under our forms of government, the absolute sovereignty rests in the people, who, while they are depositories of the sovereign power, are subjects of the government created and all owe allegiance. It is nevertheless a solemn contract between the sovereignty and the subject.

And this contract is thus defined by Blackstone. In chapter 6th of his first volume, in treating of the King's duty, he uses

this language: "However in what form soever it be conceived, this is most indisputably a fundamental and original express contract, though doubtless." &c. Please read the chapter; we quote from Wendell's Blackstone edition, of 1847.

To the enforcement of a paltry contract for dollars as set up in this case, we interpose a contract of the highest nature known to man in all his history, by which personal rights as given us by God, are defined and guaranteed. One or the other, if we be right, must yield in this case. Which it shall be this court must determine.

It will be seen that the first section of the bill of rights, puts life, liberty, and the acquisition, possession and enjoyment of property upon the same base, and promises protection of each alike.

From this language we claim that there is just as much power in the Legislature of the State of Iowa, to authorize a majority, by expression at the ballot-box, to take away the life or liberty of one or more of the minority of the community. Can this be done? If the majority through legislative enactment, can rid themselves of one-third of the 1st section of the bill of rights in the Iowa constitution, why not upon principle, be able to do the same in relation to the other two-thirds? If they can take the property of the minority, and invest in Railroad enterprise in defiance of the will of the man who acquired it, into how many other speculative enterprises may they compel him to place it? If they can hypothecate their neighbors' property in making Railroads to carry produce of the country to market, may they not interfere with and regulate every thing pertaining to the production of that produce? A county having a majority of its voting population, resident in towns, as was and is the case with defendant, may say that all the grain raised in the county ought to be ground, and that mills should be erected in the towns, as most convenient, for the farming population, ask leave of the county court to erect such mills and to pay for them, to levy a tax upon the whole people, and provide for their management by the county authorities.

The States of Illinois and Missouri, both adjoin Lee County, which contains within it the city of Keokuk, a city of great size and thrift for one of its age, and great future commercial promise. A Railroad running from, situated as she is in the very corner of the county, and crossing each of the adjoining States, would greatly increase her commerce. Can she when her population is large enough, hypothecate the property and industry of the whole county to make such road?

It is true the election record contemplates the expenditure of

money raised by sale of bonds in this case within the county. But why was such restriction imposed? Was there any necessity for putting it there? Two judges in 1853, orally declared they believed the power was granted by section 114 of the then code of Iowa, and that contemplated an expenditure within the county. They astounded the bar of the State by such decision and for some cause forbore putting any opinion on file until after the case of Clapp vs. Cedar County was decided, and a general murmur of dissatisfaction arose from the legal profession in the State, against such interpretation, until long after Judge Green was out of office, and had no right to intrude into our reports, a patched up opinion in defense of himself and colleague. Except this, there has been one uniform and universal opinion expressed by judges and lawyers in the State, that no such power was given by section 114 and accompanying sections. Acquiese in this, and there is just as much power in a majority, to take stock in a railroad in Russia or Japan, as there is in Lee County.

If the interpretation first put upon our constitution by the court of Iowa be adopted by this court, we only hold our lives, our liberty, and our property, at the will and option of a majority of our fellow-citizens. Instead of having a right to enjoy either, at our own option and pleasure, we must wait and see what disposition a majority of the voters of our county may determine to make of those rights. We may see fine opportunities to invest what we have in land, and may have a will to invest, but a majority say no, it is our will that you shall invest in Rail Road stock. It will increase our commerce, enlarge our towns, and in that way be better for you than your proposed investment in lands. We live together in community, and in America, where majorities must govern.

This proposition is so plain, that we feel as if acting contemptuously toward this court to argue it, assuming as we do, that this first article of the bill of rights means what it says. Very much might be said on this point, but we forbear.

Can human ingenuity devise any even plausible reason for denying to this first section of our bill of rights what we claim for it? Is not the lawyer or judge who attempts it, an immolater of truth, justice and law, upon an altar of selfishness and tyranny?

About the time our case was put to the Supreme Court of Iowa in 1856, a case came up in the Supreme Court of the State of Indiana. In them there is a very great difference in some respects. Our suit is instituted by twelve citizens on behalf of a minority of the citizens of Lee county of eleven

hundred, speaking in round numbers, which twelve citizens show on oath in their bill, that they are worth one hundred thousand dollars. In the Indiana case a Railroad company ran some of its machinery over a cow owned by one Whitenech. Our suit was brought in our District Court, only prepared for trial there in the Supreme Cour of the state by the formal action that was needed for that purpose. Whitenech sued the company before Justice of the Peace, beat the R. R. company, who appealed to the common pleas. There the company do not appear, are beaten again, and double the damages given by the justice is awarded plaintiff. They appeal to the Supreme Court, and assign as error, conflict of the statute under which the justice and common pleas acted with the State Constitution. The Court comes at once to the questions which the Iowa court in our case shrank from and evaded, to-wit: the force and effect of restrictions and reservations of rights of persons in American constitutions. The opinion is delivered by Perkins Judge, and is so complete an argument on the question that we avoid offering anything else on the point, adopting his entire opinion and the authorities he cites, giving him and his court full credit, and by permission of this saying we doubt if any argument can be found to excel it in America at this day. It sustains our views to the fullest extent, as to the sacred character of these restrictive clauses in the Iowa constitution, and our idea of inalienability of these personal rights from the personal man as well as our idea that constitutions are formed to protect those rights from infringements, and the duty of courts, as a last resort, is to interfere for their maintainance. The case is found in fifth volume of American Law Register, page 214, and is entitled: "The Madison and Indianapolis Railroad Company vs. Whitenech," decided at November term, 1856. The case is too long to copy and reprint, we therefore respectfully ask that it be obtained and read by the court in the consideration of our case.

We insist and argue that it was the clear and manifest intent of the convention of 1846, not only to protect from legislative infringement, all the rights enumerated by them in their bill of rights, but also to protect all her citizens in the enjoyment of all the inherent and natural rights of man as he came from the hand of his Creator. And we thus argue from the 24th section of the bill of rights already quoted. "This enumeration of rights shall not be construed to impair or deny others retained by the people."

There seems to be no others reserved in words by the people. That they considered others existed that needed protection is

clear, else why insert this one at all? Upon the hypothesis that inherent, unalienable and natural rights, though not all expressed, should be held sacred by the legislature, was this section needed, it seems to us. If such was the intent, the courts, by the plan of division of powers between three departments, are the depositories of the correcting power and the Iowa court should have applied the remedy.

The acquisition, protection and enjoyment of property, is as much a natural right, as well argued and demonstrated, in the opinion refessed to, by Judge Perkins, as life or liberty, because life, of which liberty is only an incident, cannot be sustained without property, which is accumulated as a means of sustaining life itself.

How far it may be regulated by law, is clearly pointed out in the opinion, and we concur; but the principle settled by early decisions in Iowa, carried out, will take all a man has, encumber his industry for the future, and deprive him of all means to support the life of himself and family, unless the majority in mercy to him, leaves unencumbered part of his property and industry, in the exercise of their very good pleasure.

We think a look at the cotemporaneous history of the times will show that a large portion of the indebtedness in the Eastern States, was brought about and accomplished by what is not inaptly, if vulgarly, called log-rolling legislation. The friends of a main line of improvement, in itself worthy and valuable, would, on counting up, be found not to have supporters enough to carry a law in its favor. The natural and practical plan was to get up other projects in which other parties and constituencies were interested, and so on until sufficient strength was acquired to carry a bill in favor of the whole, usually called an omnibus bill. This done, the money of the whole people was expended equally upon worthy and unworthy projects, and the public debt of a State sometimes is enlarged one-half by making worthless improvements that would not pay. On this we will not enlarge, but appeal to the experience and observation of the members of this Court for the truth of what we state.

Our Convention resolved that this source of evil should be annihilated, and hence introduced the 26th section of article Third: "Every law shall embrace but one object which shall be expressed in its title."

This, it seems to us, must be disregarded, or no omnibus bills can pass the General Assembly of the State of Iowa, and hence no log-rolling legislation of any kind whatever.

But further, in the article on State indebtedness, already quoted, they provide that no indebtedness shall be created for internal improvements, the $100,000 being intended for Governmental expenses only, until a law authorizing one single object or work shall have been voted on by the people of the State, after three months' publication throughout the State.

If these provisions have force, no two objects or works can be united in the same bill.

Special legislation was a means by which corporations for speculative purposes had been created in the Eastern States, and they had become assistant stockholders, as States, in such companies. To prevent this special legislation in favor of companies and individuals, the 6th section of the bill of rights was introduced: "All laws of a general nature shall have a uniform operation."

Under this it is conceded that special laws on local subjects may be passed, but the improvement of the entire State by railroads is not a local matter that can be legislated for specially. One of the roads embraced and described in the election record quoted above, is denominated the "Keokuk, Fort Des Moines and Minnesota Railroad Company." This road is expected and intended to traverse the whole State from the southern extremity to its northern line, and when completed must be of vast commercial importance to the entire State, opening a channel of communication, connecting by river with St. Louis and New Orleans, and on the north with the interior pine region, inaccessible by river and tributaries.

The other two are at least one hundred miles in length, traversing many counties.

The right of eminent domain exists in the sovereignty alone, and its exercise under delegated power from the State, by the companies, enables them to make their roads, and they could not cross a single farm without it.

It is most clearly a project of a general nature, and must be legislated upon in a general way, and yet Lee county, by the practice adopted, is taxed half a million of dollars, while the adjoining county of Van Buren has the road through her length and don't pay a dollar towards its construction. It will be readily seen and comprehended, that permitting the counties to tax themselves by means of delegated power from the legislature, any county may contribute or not, at its pleasure. No uniform operation of laws to raise revenue to aid in the construction of railroads, can be looked for under the system adopted by the early decisions and supported by this Court.

Has the State power, under the constitution referred to, to

raise money for any other purpose than the carrying on of the government, and the contingencies therein pointed out? Can she raise money by taxation, in any way or for any purpose, not properly falling within the terms referred to? We think not.

"Bills may originate in either House, except bills for revenue, which shall always originate in the House of Representatives, and may be amended, altered or rejected by the other; and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses."

Three departments exist in the Iowa Government, as is usual in all the States, and the legislative branch is constituted of a Senate and House of Representatives. By implication, at least, citizens are protected against amercements for revenue, unless a bill originates in the lower House for that purpose, is concurred in by the Senate, and is submitted to the Executive, and approved by him or vetoed, or remains in his hands the necessary time to become a law without any action on his part.

But by the practice adopted, Lee county speculators in corner lots, assembled in convention for that purpose, originate a bill to raise revenue from her population, pass it by a combination of speculators and laborers, get rid of all criticism of the bill by a Senate or Executive; also of the official oath of members who are sworn to support the Constitution.

Under this system, the people of Iowa are taxed for internal improvement revenue to the amount of at least sixteen millions of dollars, distributed among localities where combinations could be formed that would carry such an election.

Perkins, Judge in the case we adopt, says: "We thus discover that the idea of unlimited sovereignty in one man, or any number of men, over another, is unjust, unreasonable, violate of his moral nature, and *unwarrantable tyranny*."

The Constitution we carefully and guardedly framed for protection of our natural and inalienable rights, requiring the concurrence of the two branches of the General Assembly and the Governor of the State, all acting under the solemn sanction of oath, is thrust aside; and municipal corporations, made and created for municipal purposes alone under cover of a power delegated to them to make roads and bridges in their borders, and to determine whether hogs shall run at large or be shut up, exercises this tyranny over eleven hundred of us, without concurrence of any but persons interested in obtaining the money, and without the restraint afforded sometimes by an official oath.

Another terrible absurdity, as it appears to us, attends this

interpretation of the constitution of Iowa. Two classes of corporations, municipal and political, and corporations for pecuniary profit, are provided for. The first may be created by special laws, the latter only by general laws. A county or city may be created such by a special law, authorizing it to act as a political or municipal body. Soon as it is organized, it may, by its own act, become a corporation for pecuniary profit also; may acquire vested rights that cannot be removed, and thus grow great and place itself beyond the power of its maker, setting at defiance the old adage, that the creator is always greater than the thing created. In the philosophy of Iowa's early judges, this axiom is simple nonsense.

A majority in a county, without restraint by official oaths, without criticism from any quarter but an ostracised and fettered minority, without concurrence of any but voters interested in their schemes of aggrandisement, may originate and pass revenue bills of any amount, may unite in appropriating it to any number of objects or work, and may obtain vested rights in and to property generally, as well as take without compensation the property of all their fellow-citizens who are unwilling to join them in their speculative projects; whilst a State that created the county can only originate a revenue bill in her lower House, the members acting under restraints of official oaths. It must pass both Houses of the General Assembly, and be approved by the Governor, and when so raised and passed for internal improvement purpoies, it must be for one single object or work, and before taking effect, must be sanctioned by an affirmative vote of the people of the State.

The county, too, is untrammelled as to choice of associations. Lee county, by the election aforesaid, became a stockholder in their corporations, with A, B, C and D, of New York and elsewhere, but the power that created her cannot become a stockholder in any corporation. The State must make a railroad herself, or not at all.

For able elucidation of this feature of the case, we refer to the opinion of Lowe, Judge, in the Wapello county case, in 13th Iowa, page 338. The expose is able, and beyond our ability to equal.

The 7th and 8th articles of the Constitution quoted, show a manifest determination on the part of the makers of the instrument, not to prevent the State from engaging in works of internal improvement, but to compel her to do it alone, without aid from other stockholders, to engage in but one single work or object at a time, and to submit that single one, upon its own merits and demerits, to the people of the entire State, who

alone have power at the ballot-box to say whether the project shall be carried out or not.

We ask, in all solemnity, can a county do more than this?

There are certain well known rules of construction, which we think should apply here. They are:

1. The old or common law in reference to the making of a statute. We apply it to Constitutions as well as statutes.

2. What was the mischief intended to be remedied, or which was not before provided for.

3. What remedy the parliament (in this case constitutional convention) hath resolved and applied to cure the disease.

4. The true reason of the remedy.

5. It is the duty of the Judges to so interpret as to suppress the mischief and advance the remedy. These rules are found in 1st Blackstone by Wendell, edition of 1847, side page 86, and note 45.

6. The manifest legislative intent should govern.

7. The great purpose of all constitutions is to protect the rights and property of persons.

8. The Legislature of Iowa, under the Constitution of 1846, had no power to legislate, except that expressly conferred upon it by the instrument.

If we can induce this Court to interpret the Iowa Constitution and apply to it these rules, we have no fears for the result of this case.

Our fifth rule needs, perhaps a word of explanation. Very numerous authorities from the decisions of this Court might be cited, but it would probably be answered that this Court is of limited jurisdiction, and although supreme in its prescribed sphere, it can only act upon subjects placed directly within the scope of its jurisdiction.

Upon the point we will content ourselves with quoting one single authority from the State of Iowa, and that ought to be conclusive authority upon the Supreme Court of Iowa.

It is the case of Reed against Wright, found in 2d Green's reports, page 15, opinion by Kinney, Judge. He says: "It has accordingly become a settled principle in the legal polity of this country that it belongs to the judicial power, as a matter of right and duty, to declare every act of the Legislature, made in violation of this Constitution, or of any provision of it, null and void." He quotes 1st Kent, 450: "Under our form of Government the Legislature is not supreme. It is only one of the organs of that absolute sovereignty that resides in the whole body of the people, like other departments of the Government, it can only exercise such powers as have been

delegated to it, and when it steps beyond this boundary, its acts, like those of the most humble magistrate in the State who transcends his jurisdiction, are utterly void." He quotes Taylor vs. Porter, 4th Hill 140; and further on he says: "In this country written constitutions form the basis of the General and State Government. From them, each branch derives its power, conferring upon each department certain duties, restricting each within certain prescribed and limited spheres of action; the authority thus delegated cannot be passed with impunity."

This was the law of Iowa at the time of the interpretation of the Constitution of 1846, and ought to have been observed.

The Constitution of Pennsylvania contains the following grant of power: "The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist," &c. Here is an unlimited grant of all power. The same is in most of the State Constitutions. In that of Iowa it is not found, and our Supreme Court had settled our ~~9th~~ rule, which settlement was in force at the time of the decisions in reference to railroad bonds, and remains in force up to this time.

Under the present Constitution of Pennsylvania arose a case of Henry S. Mott et al, Canal Commissioners vs. the Pennsylvania Railroad Company and others, found on page 623 of 5th volume of American Law Register. Chief Justice Lewis delivered the unanimous opinion of the Court, on the question of the power of the Legislature of that State, to alienate any portion of the sovereign power thereto appertaining, such as the right of taxation. An attempt to do this is restrained by injunction, and declared to be in clear violation of the Constitution of that State. Will the Court please examine the case? It is certainly sound law.

Under such interpretations as this, the Iowa Legislature never possessed power, if they had tried, to alienate from the State and confer upon the counties the delegated power to raise revenue to an unlimited extent. We shall insist that they never intended to do so, but conceding they have so attempted, we deny their constitutional power.

The State is authorized, in words, to carry on war, repel invasion, suppress insurrection, and to make internal improvements in the way defined in the Constitution, as well as to carry on her ordinary government. She has a right herself to raise revenue for all these purposes at once, if, in the judgment of the Legislature, it is necessary to do so.

At the same time, say the early decisions, each county and city may engage, at her own option, in speculative schemes of

monetary aggrandizement, and may originate her own revenue bills, assess and collect taxes, to meet them, and expend the money at her own discretion. The counties and cities have already, says an examiner of our condition, ran this kind of indebtedness to the enormous sum of sixteen millions and upwards, and may go on until the debt reaches sixteen hundred millions. No restraint or check is laid upon them of any kind.

This course, and this interpretation, puts it fully in the power of the counties and cities to tax a State to the full extent of her capacity, and put it beyond the power of a State to raise revenue, to carry on war against border Indians, repel a raid from Missouri, put down internal insurrection, or make a line of internal improvement, should she be called on by circumstances, or by her people, to do so. Says Lewis, Judge in the case last cited:

"All free Governments are established by the people for their benefit, and the powers delegated are to be exercised for their common good, and not, under any circumstances, to be sold or destroyed, so long as the nations establishing them have the physical power to maintain their independence. Individuals cannot exist without food. Deprive them of the means whereby they live, and you destroy them as certainly as if you did it by shedding their blood. The necessities of Governments are as great as those of individuals. No Government can exist without revenues to defray its expenses and support its officers and agents. The revenue is the food indispensible to its existence. Deprive it of this, and you strip it of all power to perform its duties, bring it into contempt for its helplessness and uselessness, and ultimately destroy it as effectually as if it were overturned by domestic violence, or subjugated by the conquest of a foreign foe. Government is but the aggregation of individual rights and powers. It has no more right to commit political suicide than the individual has to destroy the life given him by the Creator. Contracting away the taxing power in perpetuity tends, as we have seen, inevitably to the destruction of government," &c.

On the interpretation given, we have two governments, municipal corporations and the State, each clothed with power to tax indefinitely, each interested in getting ahead of the other, each allowed to judge of the extent of the exercise of the taxing power, one acting without check by oath or other department on its own judgment and volition, already in advance in the race many millions; and the other weakened and crippled to that extent, and unable to perform the necessary functions of government.

Under the seventh article, taking its letter and spirit, can three projects or works be embodied in one proposition, as was done in the case under examination? See election record. The State could submit but one work or object to the people at a time. Has the county greater power in this respect than the State herself? This question was fairly made in our bill attacking the curative act, but was not responded to except by granting a preliminary injunction, which was served and in force until final hearing in the Supreme Court of Iowa.

We asserted in opening that no case of this character ever came before a Court in America. We base this assertion upon the peculiar restrictive provisions in our Constitution; and the further fact, that for the first time, as we are at present informed, the political contract between the sovereignty and the subject is prayed in defense against a contract for the payment of money.

At the same time we say that there are cases in New York so very near like it as may enlighten this Court completely upon the subject. Indeed, they are in principle analagous, and as like each other in details as the circumstances of the different States would allow.

In 1846, the same year our Constitution was formed and bears date, the great State of New York, then largely and to her people alarming indebted for construction of internal improvements, amended her Constitution. Will this Court have the goodness to read it? It contains prohibitions exactly similar in their nature to ours. They are so near alike as to suggest the idea that they emanated from the same mind, having studied previously the exact condition of the aged and experienced, and the embryo State.

They limit their indebtedness to a million dollars, we to one hundred thousand. The restrictive clauses vary in proportion to the different conditions of the two States, one having great age and experience, and the other being in a state of infancy, and about to enter the Union. Their Constitutions will have to be interpreted alike.

In New York, and under this amended Constitution, have arisen several cases, which have been of great magnitude, have been contested by the ablest minds of the nation, and have been most fully discussed and adjudicated by the highest tribunals in that State, and the constitutional questions we raise fully decided in accordance with our views of them.

The first case is Redman vs. Munson, found in 13th Barbour, first on page 68, and final decision on page 188.

The friends of the unfinished canals observed that under the

restrictions as to State indebtedness, contained in the amended constitution, it would require many years to complete them. Friends of the improvement, combined with speculators in bonds, induced the Legislature of the State to adopt a plan to realize canal revenues in advance, and to finish works demanding a present outlay of six or eight millions of dollars. They procured the written opinions of Daniel Lord, Daniel Webster, and others, in favor of the constitutionality of the scheme, and the ablest talent in America was exhausted in framing the law so as to evade the constitutional restrictions aforesaid.

Many millions of dollars hung upon the legal controversy, although the suit was on a note of $515, and the ablest men of the State took part in it.

The point we make to-wit: That the Legislature cannot exceed the given delegated powers conferred by the Constitution, is fully sustained, and further, that where a certain quantum of power on a given subject is expressly given, the same cannot be enlarged by construction based inferentially on other portions of the instrument. The ruling is identical with that of 2d Green's Iowa Report, page 15, already quoted.

By the unanimous concurring opinions of four Judges, the whole fabric is hurled into nonentity, notwithstanding the highly gilded and ornamental dress of evasion and indirection in which Lord and Webster had clothed it.

They aimed to contract a debt on the credit of canal revenues, and to call it a canal debt instead of a State debt, which it was in reality. The object was to furnish works of internal improvement to carry the produce of the State to market. We have the same purpose in view—marketing produce, and wish to contract new works for that purpose. We, with equal ingenuity and hypocracy, call our debts city and county instead of State indebtedness.

The case of Freeman Clark against the city of Rochester, is another case of the same kind, and is decided in the same way. It is found in 5th American Law Register, page 289. We pray the Court to read and consider these cases.

We believe, though we do not have access to the later decisions of New York, that she maintains the positions settled in these cases up to the present time.

But can the attempt to distinguish between county and city, and State indebtedness, be maintained?

The whole project in New York was an attempt to evade the force and effect of her Constitution. Ours is the same thing. Our State can only contract debts to amount in the aggregate

to one hundred thousand dollars, but it is claimed that the same people, on the same elements of credit, may go in debt indefinitely—may indirectly do that which they are forbidden to do directly. Law and honesty abhor evasion and indirection.

The solution of this question is easy, if we consult elementary writers as to what security a public creditor has for his debt. Blackstone, Vol 1, side page 330, says: "But then, what is the pledge which the public faith has pawned for the security of these debts? The land, the trade and the personal industry of the subject, from which the money must arise that supplies the several taxes. In these, therefore, and in these only, the property of the public creditors does really and intrinsically exist," &c. According to this, *the land, trade and industry are the basis of public credit*, and these alone. Is this idea opposed by any text writer? We think not.

Is it not upon these elements of security that city and county bonds rest? We think the answer must be in the affirmative. Does not the bonds of the State rest on this basis? We can conceive of no legitimate distinction.

Then can the State by indirection, through her subordinate municipalities, go in debt *ad infinitum*, upon her own legitimate and elementary basis of credit, when she is forbidden and cannot do so as a State? We treat of principles. Every city and county in the State may contract debts, under the early interpretations, until the aggregate shall reach one hundred millions. We insist that such indebtedness is based upon the same, and upon the only elements of security, that the State can, in any event contract a debt upon, and in all practicable results the debt is the same.

We respectfully refer the Court to the dissenting opinions of Judges Lowrie and Lewis, in the case of Sharpless et al vs. the Mayor of Philadelphia, found in 2d volume of American Law Register, on pages 27 and 85, for views in accord with our own on many of the points we discuss.

We apprehend we have said enough upon our third point, and therefore dismiss it and introduce another, which is:

Fourth. That in the peculiar condition of our case at the date of the institution of this suit in the Circuit Court of the United States for the District of Iowa, it could not have and exercise jurisdiction in the premises; and this Court, on error, is equally destitute of power over the subject matter presented.

To make ourselves understood on this point, it will be necessary to examine the entire history of the judiciary of the State of Iowa on the subject, but before entering upon this we premise:

That a decision of a Court, if erroneous, is to be reversed and set aside, not for the reason that it is bad or imperfect law, but because it is not law, and never was so. 1st Blackstone, pages 69 and 70.

We assert, the first Iowa decision is not law and never was in the State of Iowa, and we most respectfully ask and challenge an examination of it for the purpose of ascertaining the fact of its being law or not. It is found on 1st page of 4th volume of Green's Iowa report, and contains the majority and minority opinions relating to the case.

In looking at the case we find, if truth in statement be attributed to the Court, that the bill of rights contained in our Constitution was not alluded to or considered. Green, author of the opinion, says: "But the Constitution does not make the slightest allusion to any such restriction, and the only clause to which we are referred in this connection is that which defines the legislative department, (article 3,) and under this we are admonished that the General Assembly cannot confer upon the people the power to legislate," &c.

By this it is clear that the very essence of our view was never presented by attornies, or thought of by the Court.

Now we, with all possible respect for that Court, call attention to a few of the statements of facts on which the logical conclusions of the Court are made to rest. "Such a vote (meaning a vote similar to the one exhibited in this case) has not the slightest approximation towards legislation."

Part of section 119 of the Code then in existence was this: "And from the time of entering the result of the vote in relation to borrowing or expending money, and from the completion of the notice of its adoption in the case of a police regulation, the vote of and the entry on the records of the county shall have the force and effect of an act of the General Assembly." Under this power, the power of taxation is assumed, money is borrowed on the faith and credit of such taxation to the amount of sixteen millions, for collection of which taxes and payment thereof, the coercive authority and force of the State is to be used, and yet we are gravely told in a judicial opinion, and are asked that it be accepted as law, that such a course has "not the slightest approximation toward legislation."

But in contradiction to his first statement, it seems counsel in the case called attention of the Court to the 7th article of the Constitution, that which limits State indebtedness.

To overcome the power of this, the Court says: "If those State restrictions are applicable to counties, they must be

equally so to cities and citizens of the State. It may, with equal propriety, be said that the citizens of Iowa cannot, in the aggregate, contract debts exceeding one hundred thousand dollars, and that no citizen can become a stockholder in any corporation. There is quite as much affinity between a citizen and the State as there is between a county and a State."

Had we time and disposition to pursue the enquiry, we are confident we can show that all jurists who have ever treated upon the subject, among whom will be found every individual member of this Court, as well as the Court itself, have considered municipal corporations for political purposes, such as counties and cities, as parts of the Government that created them, responsible to such Government, and existing at its pleasure, their powers to be enlarged or modified at the option of the supreme will, bearing the same relation that an agent does to a principal, an attorney to a client, that a member, a hand or foot, does to the individual person; but Judge Green, on behalf of a majority of the Court of Iowa, ignores the entire theory of their relation, and places them on the same ground as citizens, and on this foundation stone rears his judicial superstructure, and asks jurists of the 19th century to accept it as law; and not this alone, but upon the strength of such reason and logic citizens of Lee county are to suffer the absolute confiscation of all the property they possess. We are at a loss to conceive how any Court, even under the highest conceivable internal-improvement mania, could have fallen into such an error.

Dissenting opinion of Judge Kinney, written and filed at the proper time, is its best refutation, and we ask to it the special attention of this Court.

The next case in order is the State of Iowa vs. Bissell, County Judge, in which the question of power is not examined, but is in clear and express language left to rest on the same ground that the Court had placed it in the case last recited, to-wit: That counties, cities, and men are alike in all their relations to the State Government. Case is found in same volume as the last, page 328.

Thus stood our constitution and decision thereon when our case was first presented to the court of Iowa, as reported 3d Iowa, 311.

One County Judge and two Supreme Judges had held the power to exist under the constitution, but by a fallacy of reasoning, and statement of truth already criticised and pointed out.

On the other hand two Legislative bodies, General Assem-

blies of the State of Iowa, a respectable majority in each case, under solemn official oaths to interpret the constitution aright, had so interpreted and held that no such power existed. See dissenting opinion of Kinney, Judge in the Dubuque case, and opinion of Wright Chief Justice in the Scott County case, 10th Iowa, 166. the Chief Justice having been a member of the body at the session, and having examined the law to which he refers, of the 2nd session.

One Supreme Judge, whose argument we think has never been answered, placed a clear expose of the whole affair on file, as a dissenting opinion.

The Governor of the State, Grimes, now a Senator of the United States, and a jurist of eminence, as the head of the Executive Department, had used on this subject, language showing his appprehensions of danger from the course indicated, and disapprobation of the whole. See message of 2d December, 1856, delivered but a few days before our case was argued in the Supreme Court. He also declined to sign the bill a few days after, which became what is known in Iowa as the curative act.

In this state of constitutional law, and judicial, legislative and executive decision thereon, we presented our case as already shown, when the magnitude of the questions raised, and the earnestness of our discussion of them, is made an excuse for mildly but very firmly shutting the judicial door of Iowa in our faces, so far as constitutional questions were to be discussed and considered by the Court.

Thus matters rested, until in Clapp vs. Cedar county, two Judges express their *will* that this erroneous decision of 1853 shall not be disturbed, but do so in a case in which, as is already seen, constitutional questions are ignored by counsel in argument, and cannot be found in the pleadings; in a case, too, in which the error of the decision is admitted and shown, together with the fact that the opinion has never been seen by them, and that they therefore adopt it, guessing at its contents and logic. And this action is based on the assumption that they, as a court, are responsible to the world, and particularly to all speculators in county bonds, for the entire character of the State, instead of being mere expounders of the laws made and published by the other two departments.

We think, for the first time in judicial proceedings, in America or the world, has the idea been promulgated by a court that a fair, just and faithful administration of the law amounted to repudiation. It is not judicial reasoning by a Court, much less by an American Court, but the expression of the will of the

persons assuming power over the whole Government, as might properly be done by "The Autocrat of all the Russias," because they happen to be, for the time being, the chosen expounders of the laws of Iowa.

To make an adjudication authoritative, and to command respect, it must be based on true legal philosophy; the proper and reasonable application of legal principles to the facts of the case as shown, in contradistinction, to an expression of will, and talk about Governmental character and consequences of repudiation. The sovereignty, through their representatives, under our form of Government, takes care of the character of their own Government, and are responsible to their neighbors and the world for so doing, whilst the Courts are not. Such judicial action was calculated to and did increase the complications, create determination on the part of the profession and people not to rest under it, and caused more formidable and continued efforts to produce an adjudication that would command respect and acquiescence. Such adjudication has been had, and is, it is believed, universally concurred in and respected by the profession and people of Iowa.

Decisions continued to be made by the same Judges, and of the same character only, until December, 1859, when the case of Stokes et al vs. Scott county came up for decision, they are reviewed by ~~us~~, and he farther shows that he always held the power to be in violation of the Constitution, had protested until protest ceased to be useful, until now, when a case had arisen, in which vested rights of bond-holders is not in the way of solution; a case in which the character of the State is out of the way of the due administration of constitutional law by his brother Judges, who had previously taken it in charge, and made it a pretext, not for patiently studying the questions involved, properly solving and adjudicating them, but for refusing to examine them. In that case as will be seen, the same judges who concurred in the case of 1856, arrive without difficulty at the conclusion that the cities and counties of the State had no inherent power to take stock in Railroads, and had never been authorized so to do by any law of the State of Iowa. Notice what they say. Stockton, Judge, who delivers his own opinion, uses the following: "I concur in opinion with the Chief Justice, that there is no power in the counties of this State to subscribe to the capital stock of railroad companies, and issue county bonds in payment of the same." "These are the only cases before this Court, of actions brought upon the bonds or coupons, in which the validity of such bonds has been questioned; and in each of these cases, in my opinion, the

plaintiff was entitled to recover upon grounds entirely distinct from the question of the power of the county to take the stock and issue the bonds."

Woodward, Judge, says: "It would not be possible for judicial opinion to indicate more clearly what would be the view of the Court, if it were untrammeled by previous decisions and legislative action, and were free to express its own opinion. So far as regards the existence of the power, true, under the law as it now is, I agree with the Chief Justice, and have so agreed from the time the first case was presented."

With the greatest respect for these gentlemen, we think theirs a very extraordinary position on this subject.

Citizens of the Territory of Iowa framed a Constitution. Eleven hundred citizens of Lee county, on the supposition that the sovereignty created by it, would protect them as in it was indicated and promised, embarked their lives, their liberties and their rights to acquire, possess and enjoy property, and became citizens under it.

Bonds are issued without authority of law, which tend to infringe all right of dominion over property and work its entire confiscation, if the principle be carried out.

Holders of these bonds invest their money in them, claim them to be negotiable, and that they had no notice of their invalidity.

Eleven hundred reply, we had no notice of any intent on the part of speculators to swindle you out of your money, nor of your intent to buy our bonds at 65 per cent. discount and try to make us pay the face and interest, and in the nature of things could have no such notice; on the other hand, you saw our constitution, our journals of the General Assembly of our State, our laws which were the result of the conflict shown by the journals, you saw the judgment of the court pronounced by two Judges who filed no opinion until they were long out of office, and gave no light on the subject, also the dissenting opinion of Kinney, Judge, showing you our rights under our constitution, and the utter absence of all right to attempt such a course under any statute of the State; and we further notified you by suit against the county; of all this before you invested.

These Judges hear us, admit and concede the entire truth and tenability of all positions we assume and the facts we stated, but say we won't administer the law to you, lest the character of our State, for which we make decisions, may be impaired among the bankers and Jews of Europe.

All the rights of men, asserted to be inalienable from the

person, are innocently staked on the plighted faith of a Government, and its judiciary weighs them in the scales of justice, rights and plighted Government faith on one side, and paltry dollars of European capitalists on the other, and they decide in favor of the dollars.

But of this enough.

Very great mistakes are sometimes made by very respectable Courts. We have quoted from the opinion in 3d Iowa, to show the admission of the Court that all these questions were properly raised at that time.

Witness the language of each Judge, (each files an opinion of his own) to the effect, that no question of power had been presented to them prior to Clapp vs. Cedar County.

This is flat contradiction of themselves, but the error is inadvertent, and is alluded to to show how easy a flagrant mistake may be made by honest men, and the fallibility of men generally; how much easier it is to put the momentary and vagrant impulses of the mind on paper, than it is to patiently and laboriously search out the exact truth as it is.

By reference to the curative act, found in Session Laws of 1857, page 447, it will be seen that the latest publication, by which it went into effect, took place on March 3d, 1857. It could have no effect as a law until that day.

On the 13th day of May, 1857, plaintiffs commenced suit, to test the constitutionality of this curative act, a little over sixty days intervening.

This suit is reported in 6th Iowa twice, by mistake, it is believed, on pages 304 and 394, opinions by Wright and Woodward. They each confine themselves to the single question of power in the Legislature to cure the statutory defects found to exist by the Supreme Court. They refuse, as had been before done, to look at the constitutional questions propounded, although argued at great length, as will be seen by reference to page 304, where the argument of the solicitor for the railroad companies, who then had bonds in their hands, is printed in extenso. The same questions are there pressed and discussed that had been from the beginning, as is noticed by Woodward in his opinion.

On the supposition that this court could and would interpret our Constitution for itself, on the ground that the fundamental contract between the sovereignty had been impaired, this cause was brought here on writ of error, but was dismissed for want of jurisdiction, on the ground that pecuniary contracts only are within the restrictive clause of the Constitution of the United States.

Immediately on this result, a bill of review was filed, and resulted in an examination anew of the whole case, and determination of all the questions involved, in our favor, and in enjoining and restraining the county from proceeding farther in coercing the payment of taxes for liquidation of the bonds and coupons.

When our case was in this Court in writ of error to the Supreme Court of Iowa, we obtained from Hon. Reverdy Johnson, our attorney, the following opinion and authority:

"At an election held in the county of Lee, Iowa, in 1856, it was decided by a majority of votes to take stock and issue bonds in three several railroad companies, whose roads were being constructed through the county.

"The validity of the subscription was contested in the proper Court, and at its December term, 1856, the Court decided that the election was irregular, and confered no power to issue the bonds. The Legislature of the State, on the 29th of July, 1857, passed an act enlitled 'An Act legalizing the issue of County, City and Town Corporation Bonds in the Counties of Lee and Davis.' After this, the County Judge, the proper officer, if the act was valid, proceeded to take the stock and issue the bonds, and a tax has been levied to meet the interest on the debt. The legality of the tax has been denied by some of the tax payers of the county, and on a bill filed by them for an injunction to restrain its collection, the Court of last resort in the State, decided against the complainants. From that decision a writ of error was taken to the Supreme Court of the United States, under the 25th section of the Judiciary Act of 24th September, '89. Can the writ be maintained? is the question submitted for my opinion.

"I think not. The only authority for such a writ from the judgment or decree of a State Court, is under the section of the act of Congress referred to. The purpose of that provision, and its terms, exclude such a case as this. The only case in which a judgment of a State Court can be reviewed in the Supreme Court, involving the validity of a State statute, is when it is denied on the ground of its repugnancy 'to the Constitution, treaties or laws of the United States,' and the decision is in favor of (its) validity.

"This is clearly not the present case. The entire taxing power of the State, and its authority to remodel or abolish its municipal corporations, cannot be questioned by the courts of the United States, except upon the ground of its exercise in the particular case violating the obligation of a contract. Conflict with the Constitution of the United States, unless such

conflict impairs a contract, is a question exclusively for State jurisdiction.

"No contract is involved in this instanse. It may be unjust toward the citizens of the State, collectively or individually, that such laws should be enacted, but the implied agreement existing in every Government, not to be unjust to its citizens, is not a contract within the meaning of that term in the Constitution of the United States. Such agreements are political altogether, and, under our systems, are for State jurisdiction altogether.

"The Supreme Court has several times decided that a State law, taking property from one man and giving it to another, manifestly the worst tyranny, cannot be questioned by that court under the 25th section of the judiciary act, unless there be also involved the obligation of some contract that is impaired by the law. See, among others, Saterlee & Mathewson, 2d Peters, 380, 412, Watson & Mercer, 8th Peters, 110, and the Charles River and Warren Bridge, 11th Peters, 420, 559.

"Laws inconsistent with a State Constitution, or divesting vested rights, or retrospective in their operation, giving force to a contract, express or implied, but before fatally defective in point of form or substance, are not for review by the Supreme Court under that section. Over this legislation they have no control. Whatever remedy there may be is to be sought exclusively in the Courts of the State.

I am, therefore, clear in the opinion that the writ of error cannot be maintained. REVERDY JOHNSON."

WASHINGTON, 11th Feb'y, 1860.

We do not give the opinion of Mr. Johnson as authority to this Court, but ask its consideration, and consideration of its authorities as cited to show that the entire subject matter is exclusively within State control, and beyond the jurisdiction of this Court.

Before giving a list of of authorities on this point, we offer a few thoughts.

We conceive the question to be, whether the paper sued on could ever be legally considered a contract under the Constitution of Iowa.

This necessarily presents the question whether a State, in the formation of her fundamental law, may determine for herself what shall constitute contracts within her borders or jurisdiction.

We claim she can, though we may be in error. There are certain well known subjects of contract that have been considered such since the foundations of society were laid, that per-

haps under our American system would be held by this Court to be contracts, notwithstanding a State under her Constitution and laws should judicially declare them not to be contracts, for instance those relating to natural property, *quantum meruit*, *quantum valebat*, &c., &c., but this needs no critical examination in this case.

There are many subjects in regard to which this Court certainly cannot and will not interpret against the internal regulations of a State, for instance:

The freedom of all men except for crime, is guaranteed by constitutions and laws of Northern States, and their Courts have so adjudicated. See Morris' Iowa Reports, first case in the book—that of negro Ralph—on *habeas corpus*.

At this time many negroes, slaves, have fled across the border and live in Iowa; suppose an owner of a portion of these to accompany a slave dealer into Iowa, and there point out to him his slaves, sell them to him for a price stipulated and take his note therefor, on which suit should be brought subsequently in the courts of Iowa, who should decide that an obligation given for slaves was not a valid contract under her polity, would or could this court, upon error to the State court, reverse and enforce the contract?

Iowa has a prohibitory liquor law. It declares all contracts made for liquors, except imported liquors in original packages, to be void—and her courts have so decided. Would this court on error to the State Courts, reverse and say that liquors are national property, and cannot be stricken from the list of subjects upon which valid contracts can be made?

Lotteries are also declared invalid, but many tickets from other States are sold here. Will this Court protect these contracts against and over the domestic internal regulations of a State?

We think not. Let these instances suffice.

Iowa has not prohibited internal improvements, but in her Constitution has undertaken to keep the subject within such limits as to her seemed prudent, declaring all contracts made outside of these limits void. Had she a right to do so? We insist she had, independant of all earthly power, and by the long settled and well known practice of this Court, it cannot interfere, unless the Constitution or laws of the United States or treaties are infringed.

These plaintiffs sue and seek to recover upon our statute, and they are not in a situation, and cannot carry a case of the kind, on writ of error to the Supreme Court of Iowa, on the ground that the Constitution, acts of Congress or treaties of

the United States have been invaded, to the Supreme Court of the United States. They seek to recover upon a State law, and do not alledge that any State law impairing the contract they sue upon has been enforced by the State Court.

Will or can this Court interfere with the domestic regulations of a State in any other case than such as can be reached by writ of error to the highest judicial tribunal of a State?

In support of our position we cite Collet vs. Collet, 2d Dallas 294, Calder et ux vs. Bull et ux, 3rd Dallas 388, Cooper vs. Telfair 4th Dallas 14—and the late case of Gelpcke vs. the city of Dubuque in which the Court says: "We are not unmindful of the importance of uniformity of the decisions of this Court, and those of the highest local courts giving construction to laws and constitutions of their own States."

"*It is the settled rule of this Court in such cases to follow the decision of the State Court.* But there have been heretofore in the judicial history of this Court, as doubtless there will be hereafter, many exceptional cases."

The Supreme Court of Iowa, although slow about doing it, has at length elaborately discussed the entire subject, and unanimously decided that the whole is in violation of fundamental and statute law, and they do this in a case brought to review the case of McMillen et al vs. Boyles et al, 3rd Iowa 311, and to procure decision of the question then and there raised, but not decided. They enter upon the duty in that case which should have been then and there performed by that Court, and discharge that duty fully, fearlessly and fairly, avoiding, however, an opinion in the case, which could not be written without indelicate allusions to their predecessors, which, in their estimation, courtesy of the judiciary forbade them to make.

Notwithstanding the absence of such opinion we claim that the decision of the case was intended to and in law ought to have a *nunc pro tunc*, or retrospective operation. In their decree they use this language: "And the court further finds that plaintiff as claimed in their petition, instituted their suit in chancery in the proper District Court of Lee County as claimed before the completion of the election record, and before the expiration of the notice required by law to be given in case of votes by counties on local subjects, and in full time to apprise the public of their intent to contest the legality of said bonds. And the Court also further find that plaintiffs in their said suit raised fully and properly the constitutional and legal questions now settled, and were fully entitled to have them passed upon and decided by this Court, but the Court in view of the great

magnitude of the questions and interests involved, decided their case as reported in 3rd Iowa upon the statutory questions alone in their favor, and left the constitutional questions for further consideration and adjudication, and they find &c., &c." In the same decree they say: "The Court on full examination of the Constitution and laws of the State of Iowa, bearing upon the subject, consider and adjudge that the bonds mentioned in plaintiffs petition will be the coupons attached thereto and all things accompanying them, together with the vote of the County of Lee, by which it is claimed they were authorized, and the subscription to said Railroad Companies of the stock mentioned in petition and all other acts and things done in and about the premises by the County Judge of Lee County and his predecessors in office and the levy of the taxes and attempt to collect the same by the Treasurer of Lee County as stated in the petition, are all unauthorized by law and utterly void, and not only without authority of constitutional and statute law, but in contravention and violation thereof and of common principles of justice and right." And in said decree they further say: "And the Court thus finding and thus ruling hereby adjudge, order and decree, that the proceedings complained of in plaintiff's petition, by which the vote of Lee County was taken authorizing subscription of stock thereof, the issue of bonds of the County with coupons attached and all other acts and things done in furtherance of said project, together with the act or acts of the General Assembly of the State of Iowa curing or attempting to cure the same, be held and taken to be null and void to all intents and purposes whatsoever."

The most obtuse observer must see from this decree that it was the purpose of plaintiffs, who are the same who originally commenced the suit, except one or two that had died, to press upon the court and to persist in pressing upon it, in all ways within their power, the very identical questions first raised, and compell it by their indomitable perseverance, to examine and determine, and to put into the report and publish their solution of the grave difficulties presented; and that under this pressure the court yielded and did its duty, and decided the same as they would and should have been dicided in 1856, before any bonds were issued, admitting the error, and rendering void the identical subject matter complained of in the first petition of plaintiffs.

We say and insist, that for all practicable and legal purposes, this decision is the same as if made at the proper time, and that it is, on the admitted principle of the action of this court as quoted from Gelpcke *vs.* Dubuque, &c.

Can it be said that this is an insincere and fradulent decision, made to cheat honest men out of their money first obtained and appropriated to the use of Lee County? Surely not. The very position assumed by the court, being in itself wrong and palpably unjust, was weak and seen to be untenable, and, instead of giving satisfaction, invited further effort; and the writer hereof, who was of counsel from the beginning, begs leave to say that it was his solemn and settled purpose and determination to compell the Supreme Court of Iowa to pass upon the questions made in a usual and satisfactory manner, or to desist therefrom only at death.

Out of all the jurists that ever looked at the question in the State, but two had ever ventured to assert that the course adopted was authorized by law, and the opinion published by them was so completely open to criticism, that no lawyer of Iowa ever believed, or asserted on his own reputation that it was law, and we challenge Attornies for plaintiffs to attempt it now. Hence the course of the two Judges who refused to act for fear of losing the character of the State, made abundantly manifest the weakness of their position and invited further assaults, and provoked further efforts by the insinuation that the coerced minority were repudiating when pleading the duress, when they in truth and in fact, as the judicial representatives of the government were repudiating all the obligations entered into by the government to her individual subjects.

We now ask, is it the province and mission of this court to watch the judiciary of a State, and when it commits a judicial error, to prevent its repentance and correction of that error, and in defiance of such repentance and correction fasten that error upon the State?

Is it the duty of this court to eleven hundred citizens of Lee County, Iowa, its constituents, after they have suffered judicial wrongs and been denied the judicial protection of their property for which they contracted in their constitution with their sovereign, and for which they have paid by rendition of allegiance and the discharge of every duty, and who at great delay, labor and expense have procured correction of the wrong, to wrench from their grasp their rights thus obtained and fasten the sovereign's repudiation upon them?

Repentance and return to right is said in scriptures to cause rejoicing in Heaven among angels. Will this court, thought by many to be the highest judicial tribunal on earth, step out of its sphere to prevent them?

We read in the history of savage tribes on the bloody ground

of Kentucky—surrounding frontier cabins in the night, killing some of the family and taking others prisoners, and when on the retreat, if any prisoner was found to have been wounded in the capture and consequently unable to keep up with the retreating party, the remedy applied was the tomahawk to his brains. This cannot be the principle on which this court will administer justice to us.

A majority by an act of volition merely, ordered that we put our property into stock and become common carriers by Railroad. We refuse on ground that the sovereignty of Iowa, has contracted with us to protect us in the enjoyment of lives, liberty and our property, to be used and controlled at our pleasure, and petition the sovereign, setting out the contract.—the fundamental law. The Judges say, true, your contract protects you, but two Judges have, before we were on the bench, on the part of your government, repudiated her obligations to you, and we cannot restore them, and you to the enjoyment of your rights under your contract, without loss of character with foreign bankers, therefore we refuse to attend to your petition. Will respect for foreign bankers induce this court to repeat this wrong and render it perpetual? And this, too, notwithstanding the sovereign has repented, and has resumed and is fulfilling his contract.

But on this point we have said enough to be understood, and we close upon it.

Fifth. We affirm that the paper sued on was invalid and void, when issued.

This court in Gelpcke vs. Dubuque, uses the following language in regard to the true rule of action of this court. "The sound and true rule is that if the contract, when made, was void by the laws of the State as then expounded by all departments of the Government and administered in its Court of justice, its validity and obligation cannot be impaired by any subsequent action of legislation, or decision of its Court altering the construction of the law." The Ohio Life and Trust Company vs. Deliott, 16th Howard 432.

We apprehend this rule will not be departed from by this Court, and we earnestly hope it may not, as it commends itself to our judgment as peculiarly proper and just. A rule the reverse of this would enable any State to fix and settle a policy on the subject of borrowing funds, that would enable her to fill her coffers, and then by legislative action or decision of the judiciary, repudiate at pleasure.

Is Lee County in that condition? Was the contract sued on "*valid*" by the laws of the State as then expounded, "by all

departments of the government and administered in its Courts of justice?" We, of course, mean in the sense in which the rule was originated and applied in the case from which it is expected.

The Venerable Chief Justice, as a basis in support of this rule, for to his mind are we indebted for its origin, or at least a clear statement of it, makes the following relation of facts in the opinion whence the rule is taken. "And when the constitution of a State, for nearly half a century has received one uniform and unquestioned construction by all the departments of the Government, executive and judicial, I think it must be regarded as the true one. It is true that this Court always follows the decision of the State Court in the construction of their own constitution and laws. But where those decision are in conflict, this Court must determine between them. And certainly a construction acted on as undisputed for nearly fifty years by every department of the government, and supported by judicial decision, ought to be regarded as sufficient to give the instrument a fixed and definite meaning. Contracts with the State authorities were made under it. And upon a question as to the validity of such a contract, the Court, upon the soundest principles of justice, is bound to adopt the construction it received from the State authorities at the time the contract was made."

In this case there had been uniform construction, uncontroverted, in the State, for nearly fifty years. During that period the contract being investigated was made.

In Iowa, a period of almost nine years elapsed, between the mooting of the questions involved, and their final decision by her highest Court, during all which time the subject was controverted and agitated.

In that case all the departments of Ohio had acted in concert in the construction given.

In Iowa no act of the General Assembly ever passed, directly authorizing counties to vote upon such questions, until after it was done. Two Legislatures, determined, by considerable majorities, that under the Constitution it could not be done, and those which recognized it as done, seem not to have studied the constitutional question at all, but took for granted that the decision of 1853 gave them power to act on the subject. The executive department of Iowa cannot be shown ever to have acquiesced, but as we have shown, actually dissented through Governor Grimes, now Senator from Iowa.

In Ohio, undoubted and uncontroverted judicial construction was given, as stated by the Chief Justice.

In Iowa, but two Judges out of eleven that have been on the supreme bench of the State, have ever said officially, that the laws of Iowa authorized or justified such a course, whilst nine of them concur in declaring that no such power ever existed, two out of the nine, under the circumstances stated, whilst declaring the course unauthorized and unsupported by law, determining as an act of volition only, to refuse to hear suitors in regard to it. The present Chief Justice of Iowa, Wright, has been longest of any upon that bench, was a Senator of the State at the time of the Legislative controversy; then, under his oath as Senator, he studied the Constitution, and as the result has uniformally denied the power in *to-to*.

The Court that passed on the case of "The State on &c., &c., vs. Wapello County, 14th Iowa, 388," uses the following language: "In this aspect of the case it will be perceived that the question under consideration is entirely an open one in this State, and that this Court as now constituted must pass upon it as an original question, wholly unaffected by the doctrine of *stare decisis*; or if influenced at all by prior decisions we should be induced to follow the later rather than the earlier opinions."

Are they right in this statement, or can the same state of facts be said to exist in Iowa, that existed in Ohio, at the same time Chief Justice Taney laid down the rule above set forth?

We think we have already shown that the bar of Iowa never approved, for a single day, the decision by the two Judges of 1853, 4th Iowa.

We insist, that under the State of facts existing in Iowa, including the suit by 1,100 minority of Lee County, pending all the time, that the contract sued upon cannot be said to have been valid when made, as was the contract investigated in 16th Howard 432.

Sixth. We insist that no statute was ever passed, authorizing the vote of Lee County in the premises, and that without such statute the same could not be done.

As to the authority conferred by section 114 to 116 of the code of 1851, we can add nothing to what has already been said.

In January 1855, session laws of that year pages 192 and 219, the Legislature passed two acts, to which this Court is referred. It has been claimed in argument, that these acts were intended to confer power on all the counties in Iowa to take stock in corporations, as has been done in this case. In this we cannot concur. These laws are approved on same day and

must have been considered at the same time, by the same General Assembly. Over two years had elapsed since decision of first case, and it had been held by the two Judges that section 114 of the code of 1851 conferred the power, and they, acting on that mistake, if it be a mistake as we claim it to be, only assumed and intended to regulate a subject, brought into existence and acted on before. Until it shall become the duty and province of courts to watch for and seize mistakes, give the character and force of laws, and decree their enforcement as such, it is futile we think to claim that the Legislature at the time, intended or thought of anything else.

It would be a drangerous precedent to interpret such laws as curative, and thereby saddle upon a new State sixteen millions of indebtedness. Eternal vigilance is the price of liberty. Power is constantly stealing from the many to the few, and to the courts belongs and upon them is imposed the duty, under our system, of protecting the masses from any such legislative innovation.

Our Constitution abhors any indirect and disguised enactments. It says: "Every law shall embrace but one object, which shall be expressed in its title."

Under the pretence of legislating to regulate, it will not do to attempt to cure the want of legislation, under this clause of the Constitution.

The next legislation we find is in session laws of 1857, page 447 and 229. The two laws, although far apart in the book and on different pages, are approved and submitted for approval on the same day, 29th January, 1857.

McMillan et al vs. Boyles et al, was decided late in December, within thirty days of the date of these acts. A twofold purpose is manifest. The bonds were defeated on the statutory grounds already pointed out. One, the curative act, was passed to cure, if possible, this statutory defect, and this alone we insist was its object. It is pretty fully examined in the two cases in 5th Iowa, wherein both Judges, Wright and Woodward, declare in words their understanding of its intent to be a cure for the defects pointed out by the Court. For proof of this we refer to these opinions and ask that they be read.

At the argument at the Capitol, and in the same building in which the General Assembly sat, the unconstitutionality had been urged with some force, and great doubt was thereby occasioned in that body; also, the position in relation to section 114 of the Code, since adopted, was elaborated. The one law was to cure and the other was to grant the power, if judicial

investigation should show it never had been granted. This is the manifest purpose and intent of the body in passing these acts.

If they, by the curative act, could and did cure the want of power from the beginning, then what need of a special act authorizing Lee County to take the same amount of stock and issue the same amount of bonds.

From this enabling act it may be fairly argued that the General Assembly at this date conceded that no statutory power had ever theretofore been granted: else why grant the power at that date. But we do not urge this, believing the body to be in doubt, and providing the authority in case the doubt should be solved against their view of the law.

But we do argue therefrom, and we think may reasonably insist, that at that date, January, 1857, the Legislative department was in great doubt as to the construction to be put on the Constitution and laws of the State in relation to this question, and stood in bold contrast with same department of the Ohio government, at the time the case in 16th Howard arose in that State.

Under this latter law no action has ever been had, for reason that bonds were issued under the curative act, and went into the hands of parties who had all this expression of evasion by the Court, and this Legislative doubt before their eyes.

We shall now offer some authority to show that without an enabling act counties were never considered as having the power to take stock as in this case.

The case of Sharpless vs. the Mayor of Philadelphia is considered, and perhaps is the strongest case to be found in favor of the right here insisted on. In it it is clearly admitted that an enabling act existed, and the case is made to turn upon the right and power of the State, the power being conceded to her as a State to clothe her municipal coporations, who were to be specially benfitted by a local improvement, with the power to tax that particular locality for the particular purpose, on the well known ground, that governmental burdens may be apportioned according to the governmental benefits bestowed. Sec. 2nd American Law Register, page 29, points 22 3 4 and 5.

We have before us a charge to a jury, delivered by Mr. Justice Grier of this Court, delivered in the Western District of Pennsylvania, which is so clear and emphatic, and so well to the point, that we think it quite unnecessary to quote further, and much less to argue further, as we cannot hope to equal him, in putting the point in forcible attitude. It is the case O. Ghrecke & Co. vs. the city of Pittsburg, found in 7th Am-

erican Law Register, page 725. We respectfully ask that it may be read by the Court.

We think we may reasonably claim to have established the following propositions:

1st. That notice was given by suit to all mankind of determination to try all paper in suit; that the same was issued in open defiance of the mandate of the Supreme Court of Iowa before the curative act took effect and was therefore void.

2nd. That decree of Iowa Court, unreversed and unappealed, is absolute verity, and must be respected.

3rd. That true and fair interpretation of Iowa Constitution forbids legislation authorizing issue of the paper in suit, and all of like character, and that the same is void.

4th. That the case is out of the jurisdiction of this Court, is exclusively one of State cognisance, has been adjudicated by the State Court, and is at an end as adjudicated.

5th. That the paper under the ruling of this Court was not legal, and cannot be held legal at the time of its issue, uniformity of interpretation by the authorities of Iowa being wanting.

6th. That no statutory authority was ever given to issue the paper in suit.

Can it be said that we ought, by injunction, to have prevented the issue of the bonds and coupons? We think not with reason or propriety.

In our cases at least one preliminary injunction was granted and in force from its date, 25th of January, 1858, until service of final and perpetual injunction upon authorities of the County.

But suppose it had not, how could the issue on the 1st day of January, 1857, be guarded against? We had brought suit, had obtained decree of the highest court of the State declaring the election record void, and no curative act was yet in force. Omnicience alone could have foretold their issue at that time and guarded against it.

Soon as we could we obtained injunction by full court after elaborate discussion by Attorneys of the constitutional questions involved and kept it up until final injunction which is in force now.

But suppose there had been no injunction. One man is as sacredly protected, if we are right in our views, as the largest minority would be. The combination may determine to issue ten millions, or any indefinite amount. It is usual to require bond in double the amount. This could not be done by one person, nor by five hundred. Is poverty and inability to meet

the unjust demands of illegal confederates, a legal reason for denying inalienable rights to an individual or minority?

It will be seen at a glance that notice by suit or otherwise is all that can be done in most cases of the kind, and that notice without injunction is sufficient.

The great importance to us of the questions involved, a desire to get the whole merit of our case before the Court, is our apology for the crude argument we submit.

Wm B. Allison ~~FRANCIS SEMPLE,~~ Attorney for Defendants.

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